

EXHIBIT 5

Transcript of Shane Burns

1 (1 to 4)

October 25, 2022

<p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4 -----X</p> <p>5 TRUTEK CORP., :</p> <p>6 Plaintiff/Counter-Defendant,: Case No.:</p> <p>7 v. : 2:21-cv-10312</p> <p>8 BLUEWILLOW BIOLOGICS, INC. :</p> <p>9 Defendant/Counter-Plaintiff,:</p> <p>10 ROBIN ROE 1 through 10 :</p> <p>11 (fictitious names); ABC :</p> <p>12 CORPORATION 1 through 10 :</p> <p>13 (fictitious names), :</p> <p>14 Defendants. :</p> <p>15 -----X</p> <p>16</p> <p>17 Deposition of SHANE BURNS</p> <p>18 Conducted Remotely</p> <p>19 Tuesday, October 25, 2022</p> <p>20 10:17 a.m.</p> <p>21</p> <p>22</p> <p>23 Job No.: 468439</p> <p>24 Pages: 1-168</p> <p>25 Reported by: Matthew Goldstein, RMR, CRR</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFF, TRUTEK CORP.:</p> <p>3 STANLEY H. KREMEN, ESQUIRE</p> <p>4 4 Lenape Lane</p> <p>5 East Brunswick, New Jersey 08816</p> <p>6 732.593.7294</p> <p>7</p> <p>8 ON BEHALF OF THE DEFENDANT, BLUEWILLOW</p> <p>9 BIOLOGICS, INC.:</p> <p>10 LIANE M. PETERSON, ESQUIRE</p> <p>11 FOLEY & LARDNER</p> <p>12 3000 K Street, NW</p> <p>13 Suite 600</p> <p>14 Washington, D.C. 20007</p> <p>15 202.672.5300</p> <p>16</p> <p>17 ALSO PRESENT:</p> <p>18 JENNIFER PODIS - REMOTE TECHNICIAN</p> <p>19 JOHN PARKMAN - VIDEOGRAPHER</p> <p>20 ASHOK WAHI</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 Deposition of SHANE BURNS, conducted</p> <p>2 remotely:</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Pursuant to Notice, before Matthew Goldstein,</p> <p>10 RMR, CRR, Notary Public in and for the State of</p> <p>11 Maryland.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF SHANE BURNS PAGE</p> <p>3</p> <p>4 By MS. PETERSON 8</p> <p>5 E X H I B I T S</p> <p>6 (Attached)</p> <p>7 BURNS DEPOSITION EXHIBIT PAGE</p> <p>8</p> <p>9 Exhibit 13 Previously Marked, Plaintiff's 106</p> <p>Opening Technical Report of Dr.</p> <p>Edward A. Lemmo</p> <p>10 Exhibit 23 Surface Electrostatic Charge 64</p> <p>Evaluation of Nasal Application</p> <p>Products Technical Report</p> <p>11</p> <p>12 Exhibit 24 Deposition Notice 80</p> <p>13 Exhibit 25 Professional Profile of Shane 88</p> <p>Burns</p> <p>14</p> <p>15 Exhibit 26 Photograph of NasalGuard 101</p> <p>16 Exhibit 27 Determination of Surface 158</p> <p>Electrostatic Charge on Nasal</p> <p>Application Test Products Test</p> <p>Conducted and Report Prepared</p> <p>by Alexei Ermakov; Ph. D.</p> <p>(Physics), Sr. Consultant</p> <p>17</p> <p>18</p> <p>19</p> <p>20 -----TRANSCRIPT INFORMATION/REQUESTS-----</p> <p>21 DOCUMENT/DATA REQUESTS: (Page/Line)</p> <p>22 120 13</p> <p>23</p> <p>24</p> <p>25</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

2 (5 to 8)

October 25, 2022

<p>5</p> <p>1 THE REMOTE TECHNICIAN: Thank you to</p> <p>2 everyone for attending this proceeding remotely,</p> <p>3 which we anticipate will run smoothly. Please</p> <p>4 remember to speak slowly and do your best not to</p> <p>5 talk over one another.</p> <p>6 Please be aware that we are recording</p> <p>7 this proceeding for backup purposes. Any</p> <p>8 off-the-record discussions should be had away from</p> <p>9 the computer. Please remember to mute your mic</p> <p>10 for those conversations.</p> <p>11 Please have your video enabled so the</p> <p>12 reporter can identify who is speaking. If you are</p> <p>13 unable to connect with video and are connecting</p> <p>14 via phone, please identify yourself each time</p> <p>15 before speaking.</p> <p>16 I apologize in advance for any</p> <p>17 technical-related interruptions we might have.</p> <p>18 Thank you.</p> <p>19 THE VIDEOGRAPHER: Just a moment,</p> <p>20 please.</p> <p>21 MR. KREMEN: I'm sorry.</p> <p>22 THE VIDEOGRAPHER: Go ahead, Mr. Kremen.</p> <p>23 MR. KREMEN: I just want to do one</p> <p>24 housekeeping matter. Just as yesterday, we do not</p> <p>25 agree to the usual stipulations. However, we do</p>	<p>7</p> <p>1 BlueWillow Biologics.</p> <p>2 THE VIDEOGRAPHER: The court reporter</p> <p>3 today is Matthew Goldstein, also representing</p> <p>4 Planet Depos.</p> <p>5 Would the reporter please swear in the</p> <p>6 witness.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>6</p> <p>1 agree to, except for objection to form of the</p> <p>2 question, all other objections will be reserved at</p> <p>3 time of trial.</p> <p>4 MS. PETERSON: Okay.</p> <p>5 THE VIDEOGRAPHER: All right. Just a</p> <p>6 moment, please, and I'll get us on the record.</p> <p>7 Here begins Media No. 1 in the video</p> <p>8 recorded deposition of Shane Burns, in the matter</p> <p>9 of Trutek Corporation versus BlueWillow Biologics</p> <p>10 Incorporated, et al., in the United States</p> <p>11 District Court Eastern District of Michigan</p> <p>12 Southern Division, Case No. 2:21-cv-10312.</p> <p>13 Today's date is Tuesday, October 25th,</p> <p>14 2022. The time on the video monitor is now</p> <p>15 10:17 a.m. Eastern Time.</p> <p>16 The remote videographer today is John</p> <p>17 Parkman representing Planet Depos.</p> <p>18 All parties of this video deposition are</p> <p>19 attending remotely.</p> <p>20 Would counsel please voice identify</p> <p>21 themselves and state whom they represent.</p> <p>22 MR. KREMEN: Stanley Kremen for the</p> <p>23 plaintiff, Trutek Corporation.</p> <p>24 MS. PETERSON: Liane Peterson from Foley</p> <p>25 & Lardner LLP, on behalf of the defendant,</p>	<p>8</p> <p>1 P R O C E E D I N G S</p> <p>2 Whereupon,</p> <p>3 SHANE BURNS,</p> <p>4 being first duly sworn or affirmed to testify to</p> <p>5 the truth, the whole truth, and nothing but the</p> <p>6 truth, was examined and testified as follows:</p> <p>7 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>8 BY MS. PETERSON:</p> <p>9 Q. Thank you.</p> <p>10 Good morning. Could you please state</p> <p>11 your full name and address for the record?</p> <p>12 A. My name is Shane Burns. I'm presently</p> <p>13 at 700 West Park Avenue in Perkasio, Pennsylvania.</p> <p>14 That's where the company is located. You wanted</p> <p>15 my business address; correct?</p> <p>16 Q. That's fine. Thank you.</p> <p>17 And just to introduce myself, my name is</p> <p>18 Liane Peterson. I'm one of the lawyers that's</p> <p>19 representing the defendant, BlueWillow Biologics,</p> <p>20 in this litigation matter that's pending in</p> <p>21 Michigan. And I will be taking your deposition</p> <p>22 today.</p> <p>23 So I understand you're located currently</p> <p>24 at your place of employment; is that correct?</p> <p>25 A. Yes.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

3 (9 to 12)

October 25, 2022

<p>9</p> <p>1 Q. Okay. Is there anybody else in the room</p> <p>2 with you today?</p> <p>3 A. No.</p> <p>4 Q. Mr. Burns, have you had your deposition</p> <p>5 taken before?</p> <p>6 A. Yes.</p> <p>7 Q. How many times?</p> <p>8 A. One time.</p> <p>9 Q. And was that in connection with your</p> <p>10 employment at ETS or in some other capacity?</p> <p>11 A. No, it was at a previous employer</p> <p>12 relating -- unrelated to anything having to do</p> <p>13 with my own work.</p> <p>14 Q. Okay. So you were deposed in connection</p> <p>15 with a matter with respect to your prior</p> <p>16 employment?</p> <p>17 A. It was in respect to a matter connected</p> <p>18 to another employee.</p> <p>19 Q. Okay. And would this be your prior</p> <p>20 employment at EFE Laboratories?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And then would it be fair to</p> <p>23 assume that your deposition, the subject matter of</p> <p>24 it, didn't have anything to do with any particular</p> <p>25 test or equipment that you used?</p>	<p>11</p> <p>1 A. Okay.</p> <p>2 Q. And then, finally, as was explained</p> <p>3 earlier, let's try to speak slowly, not talk over</p> <p>4 each other so that the court reporter can take</p> <p>5 down a clean record of the deposition today.</p> <p>6 Okay?</p> <p>7 A. Agreed.</p> <p>8 Q. Are you aware of any reason why you</p> <p>9 would be unable to provide complete and truthful</p> <p>10 testimony during the deposition today?</p> <p>11 A. No, I can't think of any reason.</p> <p>12 Q. Okay. Mr. Burns, have you been retained</p> <p>13 to provide any testing services in connection with</p> <p>14 a litigation in the past four years?</p> <p>15 A. You mean -- I didn't know that it had</p> <p>16 anything to do with litigation. I have performed</p> <p>17 testing services for Ashok Wahi's company, Trutek.</p> <p>18 Q. Okay. And you're saying that at the</p> <p>19 time you were engaged to perform those testing</p> <p>20 services for Trutek, you were unaware that it was</p> <p>21 related to any litigation?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Now, in connection with your</p> <p>24 other work at ETS, are you aware of whether the</p> <p>25 testing that you conducted was related to any</p>
<p>10</p> <p>1 A. No, it had nothing to do with anything I</p> <p>2 actually did at all.</p> <p>3 Q. Okay. Fair enough.</p> <p>4 And then you've never had your</p> <p>5 deposition taken on any type of personal matter</p> <p>6 either; is that correct?</p> <p>7 A. No.</p> <p>8 Q. Okay. How long ago was that deposition?</p> <p>9 A. It would have been 2014.</p> <p>10 Q. Well, given that that was some time ago,</p> <p>11 I'll just go through a few rules just to remind</p> <p>12 you about how the deposition will proceed today.</p> <p>13 I would ask that you wait until I finish my</p> <p>14 questions before responding, and I will try to do</p> <p>15 the same when you're speaking, as well. Okay?</p> <p>16 A. Sure.</p> <p>17 Q. And I'm going to ask that you answer my</p> <p>18 questions verbally rather than shaking your head</p> <p>19 or nodding or saying "uh-huh," just so that we can</p> <p>20 have a clean record. Okay?</p> <p>21 A. Understood.</p> <p>22 Q. And if at any point in time you do not</p> <p>23 understand one of my questions, let me know. I</p> <p>24 can rephrase. Otherwise, I'll assume that you</p> <p>25 understood the question. Okay?</p>	<p>12</p> <p>1 litigation matters?</p> <p>2 A. No, I don't believe so.</p> <p>3 Q. Okay. So to the best of your knowledge,</p> <p>4 the testing that Trutek retained you to conduct is</p> <p>5 the only time that you've performed testing in</p> <p>6 support of a litigation matter; is that right?</p> <p>7 A. That I have been informed of.</p> <p>8 Q. Fair enough. Thank you.</p> <p>9 And just for completeness, I assume that</p> <p>10 same answer would hold for whether or not you've</p> <p>11 knowingly prepared a report concerning any testing</p> <p>12 related to a litigation matter?</p> <p>13 A. As far as I know.</p> <p>14 Q. Okay. So this is the only instance that</p> <p>15 you're aware of?</p> <p>16 A. As far as I know.</p> <p>17 Q. Okay. And you prepared two reports in</p> <p>18 connection with testing that was conducted on</p> <p>19 behalf of Trutek; correct?</p> <p>20 A. I performed two rounds of testing for</p> <p>21 Trutek and created reports to go with those tests,</p> <p>22 yes.</p> <p>23 Q. Have you been asked by Trutek to perform</p> <p>24 any other testing apart from those two rounds of</p> <p>25 testing that you just identified?</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 25, 2022

<p>13</p> <p>1 A. I don't believe so. Unless he's got --</p> <p>2 you know, people contact me often through their</p> <p>3 companies. So I don't necessarily know who the</p> <p>4 owners of those companies are.</p> <p>5 Q. Okay.</p> <p>6 A. But as far as I know, just the two,</p> <p>7 yeah.</p> <p>8 Q. Okay. So to the best of your knowledge,</p> <p>9 you are not aware of anyone at Trutek or any</p> <p>10 lawyers for Trutek requesting you to conduct any</p> <p>11 other testing apart from the two rounds of testing</p> <p>12 that you identified earlier?</p> <p>13 A. As far as I know, I don't know of any</p> <p>14 other instances of people trying to contact me</p> <p>15 relating to Trutek.</p> <p>16 Q. Okay. And then I assume that you have</p> <p>17 not been retained or requested by Trutek's counsel</p> <p>18 to provide testing on any other matter?</p> <p>19 A. No, my first time speaking with</p> <p>20 Mr. Kremen was in relation to this deposition and</p> <p>21 this litigation that's going on here.</p> <p>22 Q. Okay. And when were you first retained</p> <p>23 or engaged to conduct testing services on behalf</p> <p>24 of Trutek?</p> <p>25 MR. KREMEN: Objection to the form of</p>	<p>15</p> <p>1 but I can look it up if you would like.</p> <p>2 Q. I don't need to know the exact -- I'm</p> <p>3 just -- approximately two weeks ago, a few weeks</p> <p>4 ago?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay.</p> <p>7 A. Recently.</p> <p>8 Q. Okay. So what I would like to know is</p> <p>9 when were you first contacted to conduct the</p> <p>10 testing that you did?</p> <p>11 A. Oh, the first time Mr. Wahi contacted me</p> <p>12 I was at the previous facility. We moved at the</p> <p>13 end of 2019, beginning of 2020. So he had</p> <p>14 actually contacted me before we changed locations.</p> <p>15 So that would have been in 2019.</p> <p>16 Q. Okay. And did Mr. Wahi contact you</p> <p>17 directly, or did he reach out to ETS?</p> <p>18 A. So he reached out to -- through the ETS</p> <p>19 e-mail. So I'm the contact at ETS where people --</p> <p>20 customers often first reach us. But it was</p> <p>21 through the ETS e-mail system, yeah.</p> <p>22 Q. Okay. So he did not identify you</p> <p>23 personally and reach out to you personally. He</p> <p>24 just reached out generally to ETS?</p> <p>25 A. Yeah, I believe so.</p>
<p>14</p> <p>1 the question.</p> <p>2 Do you mean in general or specifically</p> <p>3 for this litigation?</p> <p>4 MS. PETERSON: In general.</p> <p>5 THE WITNESS: I've not been retained for</p> <p>6 anything else other than this litigation.</p> <p>7 BY MS. PETERSON:</p> <p>8 Q. Okay. And I'm just asking you when that</p> <p>9 occurred? When were you first contacted?</p> <p>10 A. Oh, I believe Mr. Kremen reached out to</p> <p>11 me a few weeks ago. I don't recall the exact</p> <p>12 date, but not long ago. Less than a month ago.</p> <p>13 Q. Okay. And --</p> <p>14 A. Sorry.</p> <p>15 Q. Okay. So you said Mr. Kremen reached</p> <p>16 out to you a few weeks ago. And what was the</p> <p>17 purpose of that communication?</p> <p>18 A. He told me that he would need me to</p> <p>19 testify as an expert witness or at least as the</p> <p>20 person who created the test reports.</p> <p>21 Q. Oh, okay.</p> <p>22 So approximately two weeks ago</p> <p>23 Mr. Kremen reached out to you to explain that you</p> <p>24 would need to give this deposition?</p> <p>25 A. I don't know if it was two weeks ago,</p>	<p>16</p> <p>1 Q. Okay.</p> <p>2 A. It was a while ago, but from what I</p> <p>3 recall, he wasn't -- he did not reach my personal</p> <p>4 e-mail. He reached my work e-mail.</p> <p>5 Q. Okay. And how was it determined then</p> <p>6 that you would be the employee of ETS that would</p> <p>7 conduct the testing?</p> <p>8 A. Well, we're a small business, and so I'm</p> <p>9 the employee at the time who was conducting</p> <p>10 testing.</p> <p>11 Q. Okay. How many -- at that time how many</p> <p>12 people were employed by ETS?</p> <p>13 A. Between 8 and 12. Not many.</p> <p>14 Q. Okay. And at the time, you were the</p> <p>15 only -- well, let me back up.</p> <p>16 What kind of business is ETS engaged in</p> <p>17 generally?</p> <p>18 A. Well, we do four different types of -- I</p> <p>19 guess you could say products and services. We</p> <p>20 perform testing and consulting. We also perform</p> <p>21 calibration. And that's the service side of the</p> <p>22 business. And then on the products side of the</p> <p>23 business, we manufacture lab equipment. We'll</p> <p>24 manufacture environmental control lab equipment,</p> <p>25 and we'll also manufacture electrostatic</p>

Transcript of Shane Burns

5 (17 to 20)

October 25, 2022

<p>17</p> <p>1 characterization and testing lab equipment.</p> <p>2 Q. Okay. And so at the time that Mr. Wahi</p> <p>3 contacted you sometime in 2019, you were the only</p> <p>4 employee at ETS who provided those testing and</p> <p>5 consulting services; is that correct?</p> <p>6 MR. KREMEN: Objection to the form of</p> <p>7 the question.</p> <p>8 You may answer.</p> <p>9 THE WITNESS: Okay. We had a retiring</p> <p>10 former owner named Stan Whites, he retired in</p> <p>11 2020. So when we moved, beginning of 2020, Stan</p> <p>12 retired. And he had been doing testing and some</p> <p>13 consulting, but by 2019, his work for us had</p> <p>14 tapered off to the point where he was practically</p> <p>15 not doing anything at all.</p> <p>16 So you could say in 2019 Stan Whites,</p> <p>17 the former owner, was still performing some</p> <p>18 testing. But at the time that I was performing it</p> <p>19 for Mr. Wahi, Stan was pretty much out of the</p> <p>20 picture. He was preparing to move to Florida, and</p> <p>21 he was finishing up the transfer of his portion of</p> <p>22 the business and what he was involved in so he</p> <p>23 could step out.</p> <p>24 BY MS. PETERSON:</p> <p>25 Q. I understand. Thank you.</p>	<p>19</p> <p>1 Q. Okay. And so that would be the amount</p> <p>2 of, I guess, the transfer of energy when two</p> <p>3 terminals come in contact with each other?</p> <p>4 A. No.</p> <p>5 Q. Okay. Can you just explain it for me</p> <p>6 then?</p> <p>7 A. Sure. Electrostatic discharge is simply</p> <p>8 any time you have -- you have a discharge of</p> <p>9 energy if you want to describe it as that, from a</p> <p>10 place of higher potential to a place of lower</p> <p>11 potential or from one potential to another,</p> <p>12 electrostatic potential. And there's a lot of</p> <p>13 types of electrostatic discharge.</p> <p>14 Q. Okay. I mean, would one example of that</p> <p>15 be when you're walking along a carpet or something</p> <p>16 and then you touch a metal object and get a shock?</p> <p>17 A. That is one type of electrostatic</p> <p>18 discharge.</p> <p>19 Q. Okay. And that's -- that electrostatic</p> <p>20 discharge, that's what ETS is primarily focused on</p> <p>21 and known for with respect to its testing</p> <p>22 services?</p> <p>23 A. So that's partly true. It's not the</p> <p>24 entirety of it. There are other elements to what</p> <p>25 we're known for.</p>
<p>18</p> <p>1 So at the time that you conducted that</p> <p>2 first round of testing then, would it be fair to</p> <p>3 say that you were the only employee at ETS who was</p> <p>4 providing the testing and consulting services?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And do you have an understanding</p> <p>7 of why Mr. Wahi decided to reach out to ETS for</p> <p>8 these testing services that he requested?</p> <p>9 A. Yes.</p> <p>10 Q. And what is that?</p> <p>11 A. We're an electrostatic characterization</p> <p>12 lab. We perform testing on electrostatic</p> <p>13 phenomena. And we've been doing that for a very</p> <p>14 long time. The previous owner, Stan Whites, I'm</p> <p>15 told by Mr. Wahi, was someone that Mr. Wahi knew</p> <p>16 of and had heard of. Stan Whites was known in the</p> <p>17 industry. He invented a number of machines that</p> <p>18 people commonly use today to perform testing.</p> <p>19 Q. Okay.</p> <p>20 A. So our business is well known to be</p> <p>21 connected to the electrostatic testing industry.</p> <p>22 Q. Okay. Speaking of the electrostatic</p> <p>23 testing industry, I saw a number of references in</p> <p>24 your résumé to ESD. What does that stand for?</p> <p>25 A. Electrostatic discharge.</p>	<p>20</p> <p>1 Q. Okay. Can you explain what those other</p> <p>2 elements are?</p> <p>3 A. Yes. Stan Whites invented a number of</p> <p>4 stimulators of electrostatic discharge. And those</p> <p>5 simulators helped to make a name for the company.</p> <p>6 He was also involved in the founding of the</p> <p>7 ESD/EOS Association, and he was a founding member</p> <p>8 of that organization. And they now write many of</p> <p>9 the test standards and test methods and document</p> <p>10 those and perform studies on characterizing</p> <p>11 different kinds of electrostatic discharge.</p> <p>12 Q. Okay.</p> <p>13 A. And resistance testing and static decay</p> <p>14 testing, those are also things that Stan Whites</p> <p>15 was instrumental in helping to standardize in the</p> <p>16 industry.</p> <p>17 Q. Okay. Thank you for that explanation.</p> <p>18 So with respect to the testing that you</p> <p>19 were asked to conduct for Trutek, would you</p> <p>20 characterize that as ESD testing?</p> <p>21 A. It's electrostatic characterization</p> <p>22 testing. It's not technically ESD testing.</p> <p>23 Q. Okay. And then I would assume that all</p> <p>24 of those standards that you were mentioning for</p> <p>25 electrostatic discharge testing, those don't</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

6 (21 to 24)

October 25, 2022

<p>1 necessarily apply to the testing that you did for 2 Trutek? 3 A. Some do, some don't. 4 Q. Okay. Mr. Burns, do you intend to 5 testify at the trial in this matter if you're 6 asked to do so? 7 A. If I'm asked to do so, I will. 8 Q. Okay. And when were you contacted about 9 conducting the second round of testing for Trutek? 10 A. I don't remember exactly when I was 11 contacted. I do have the date when the testing 12 was performed, though. 13 Q. Okay. 14 A. I can probably look it up if you want. 15 Q. Yeah, I don't necessarily need an exact 16 date. I mean, if you have a general recollection 17 of the time frame, I mean, if it was roughly 18 around that same time frame that you did the 19 testing? 20 A. It would have been late 2020, because 21 the testing was performed -- or completed in 22 January of 2021. 23 Q. Okay. And was it Mr. Wahi who contacted 24 you again to request the second round of testing? 25 A. I believe so. I know his daughter was</p>	<p>21 23 1 BY MS. PETERSON: 2 Q. Okay. Did Mr. -- actually, do you know 3 Mr. Wahi's daughter's first name or her name? 4 A. I can't recall it off the top of my head 5 right now, but I can look it up for you. Or I can 6 just ask Mr. Wahi. 7 Q. Well, he's not being questioned at this 8 deposition. So that's fine. 9 I just didn't know if he had a name that 10 we could refer to her instead of just calling her 11 Mr. Wahi's daughter. 12 A. I can probably look it up if you'd like. 13 Q. That's okay. We don't need to do that 14 right now, but thank you. 15 So I assume she did not personally 16 attend to observe the first round of testing that 17 you conducted; is that correct? 18 MR. KREMEN: Objection to the form of 19 the question. 20 You may answer. 21 THE WITNESS: Actually, I believe she 22 was, as well as Mr. Wahi himself were both present 23 at the first test. 24 BY MS. PETERSON: 25 Q. Okay. So both Mr. Wahi and his daughter</p>
<p>22 1 involved in that second round. 2 Q. How was Mr. Wahi's daughter involved in 3 the second round of testing? 4 A. I believe she has an official position 5 at his company and she was present, actually. 6 Q. So she was present when you conducted 7 the test? 8 A. I believe so. 9 Q. Did you personally conduct the test? 10 A. Yeah. Yes. 11 Q. And do you know why Mr. Wahi's daughter 12 personally attended that second round of testing? 13 MR. KREMEN: Objection to the form of 14 the question. 15 You may answer. 16 THE WITNESS: Customers commonly, very 17 often, want to see the testing performed. 18 Sometimes it's to see how the testing is performed 19 should they wish to reproduce the test themselves. 20 Other times they're simply curious. And there are 21 also other reasons, of course. Sometimes a test 22 specimen is exceptionally costly and they can't 23 afford for it to be damaged or ruined and they 24 wish to be present to instruct us on the care and 25 handling of their specimen.</p>	<p>24 1 were present at the first test, and only 2 Mr. Wahi's daughter was present at the second 3 test? 4 A. There was another employee present with 5 her, as well, at the second test. I don't 6 remember this person's name. 7 Q. Okay. Was it a man or a woman? 8 A. It was a man. 9 Q. And it was definitely an employee of 10 Trutek? 11 A. Yes, I believe so. 12 Q. Do you know what that person's role was 13 within the company? 14 A. I apologize, but I don't remember the 15 exact title or name of the person. 16 Q. Okay. So do you know specifically why 17 Mr. Wahi and his daughter and this other Trutek 18 employee decided to attend the testing? 19 MR. KREMEN: Objection to the form of 20 the question. 21 You may answer. 22 THE WITNESS: My presumption was that 23 they were curious how to perform the test 24 themselves should they need to reproduce the 25 results.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

7 (25 to 28)

October 25, 2022

<p>25</p> <p>1 BY MS. PETERSON:</p> <p>2 Q. Okay. And so you didn't ask them?</p> <p>3 A. It didn't seem important. Customers</p> <p>4 very often want to witness the test occur. That's</p> <p>5 not unusual in the least.</p> <p>6 Q. Yeah, I'm not suggesting that it's</p> <p>7 unusual. I'm just trying to understand what</p> <p>8 happened.</p> <p>9 And I assume they -- or did they explain</p> <p>10 to you why they chose to attend?</p> <p>11 A. I don't know why they should have to.</p> <p>12 Q. Okay. That really -- we're not debating</p> <p>13 whether or not they should have to. I'm just</p> <p>14 asking a simple question. Did they tell you</p> <p>15 anything about why they asked and chose to attend</p> <p>16 the testing?</p> <p>17 A. I don't remember. I don't think they</p> <p>18 did. I usually don't require customers to give me</p> <p>19 a reason for why they should want to witness a</p> <p>20 test. All they have to do is say that they would</p> <p>21 like to see the test. And I tell them usually,</p> <p>22 Okay, let's just schedule a time.</p> <p>23 Q. Okay. Fair enough. Thank you.</p> <p>24 And what hourly rate did you charge</p> <p>25 Trutek for the testing services that you provided</p>	<p>27</p> <p>1 Q. Yeah, sure.</p> <p>2 Then do you -- approximately how much</p> <p>3 time have you spent working on the testing that</p> <p>4 you conducted for Trutek?</p> <p>5 A. One of them was at least a day. And</p> <p>6 then I spent more time after that working on the</p> <p>7 report. The second one I think was more like -- I</p> <p>8 think it was also about a day working on that one.</p> <p>9 Q. About a day for working on the test?</p> <p>10 A. Yeah, I can look it up on my calendar if</p> <p>11 you would like to know the exact amount of time</p> <p>12 that I spent on it.</p> <p>13 Q. Yeah, if you can -- you know, it doesn't</p> <p>14 have to be an exact amount of time down to the</p> <p>15 minute or anything, but an approximate number of</p> <p>16 hours that you spent working on it, that would be</p> <p>17 great.</p> <p>18 A. Okay.</p> <p>19 Q. When you spoke with Mr. Wahi to --</p> <p>20 actually, never mind.</p> <p>21 Before you started the testing, did you</p> <p>22 speak with anybody else at Trutek other than</p> <p>23 Mr. Wahi?</p> <p>24 A. Mr. Wahi was the main contact that I</p> <p>25 had. I don't recall speaking to anyone other than</p>
<p>26</p> <p>1 in this matter?</p> <p>2 A. There's a standard testing rate, and</p> <p>3 then there's custom testing rates. And custom</p> <p>4 test rates usually are charged by the day.</p> <p>5 Standard test rates are usually by the specimen,</p> <p>6 plus some setup and equipment fees and so on.</p> <p>7 Q. Okay. And what did you charge Trutek</p> <p>8 for the testing that you conducted?</p> <p>9 A. I don't remember, but I can look that up</p> <p>10 for you if you would like.</p> <p>11 Q. We will need that information, perhaps</p> <p>12 you can look that up on a break for us.</p> <p>13 A. Standard testing is considerably less</p> <p>14 expensive than custom testing. And I believe that</p> <p>15 this was considered custom testing.</p> <p>16 Q. Okay.</p> <p>17 A. I could be mistaken about that, but I</p> <p>18 can look up the test.</p> <p>19 Q. I will need to know that information.</p> <p>20 So at some point during the deposition during a</p> <p>21 break if you can look that up and let me know when</p> <p>22 we reconvene, I would appreciate it.</p> <p>23 A. Uh-huh.</p> <p>24 Q. And --</p> <p>25 A. I'm just writing it down.</p>	<p>28</p> <p>1 himself, his daughter, and that other employee</p> <p>2 that I mentioned.</p> <p>3 Q. Okay. And when was the first time that</p> <p>4 you spoke with Mr. Kremen? Was it that instance a</p> <p>5 few weeks ago?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And to the best of your</p> <p>8 knowledge, have you ever had any communications</p> <p>9 with any other attorneys representing Trutek</p> <p>10 regarding the testing that you conducted for them?</p> <p>11 A. No, I'm not aware that there were any</p> <p>12 other attorneys.</p> <p>13 Q. And the same would be true for the first</p> <p>14 round of testing; is that right?</p> <p>15 A. I did not speak with any attorneys for</p> <p>16 either round of testing. I've only spoken with</p> <p>17 attorneys in connection with this deposition.</p> <p>18 Q. Great. Thank you.</p> <p>19 A. As far as Trutek is concerned anyway.</p> <p>20 Q. And then specifically within ETS, did</p> <p>21 anybody within the company assist you or work with</p> <p>22 you in designing the test or conducting the test?</p> <p>23 A. Anyone else at Trutek?</p> <p>24 Q. No, at ETS.</p> <p>25 A. Oh, at ETS. I don't recall anyone other</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 25, 2022

<p style="text-align: right;">29</p> <p>1 than maybe my general manager, I may have bounced</p> <p>2 an idea or two off of him. Stan Whites, even at</p> <p>3 the end I was asking him for advice on a regular</p> <p>4 basis. But I don't think for this test I got any</p> <p>5 significant input from either of them.</p> <p>6 Q. Okay.</p> <p>7 A. I could be mistaken, but I don't</p> <p>8 remember getting any advice from either of them</p> <p>9 regarding this.</p> <p>10 Q. Okay. So to the best of your knowledge</p> <p>11 today, you do not recall getting any significant</p> <p>12 input or advice from anybody within ETS; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Now, with respect to your</p> <p>15 assignment for the testing services, what were you</p> <p>16 asked to do?</p> <p>17 MR. KREMEN: Objection to the form.</p> <p>18 Do you mean in the -- for this</p> <p>19 particular case or the first round of testing?</p> <p>20 MS. PETERSON: We can talk about this</p> <p>21 particular round of testing.</p> <p>22 BY MS. PETERSON:</p> <p>23 Q. So for your assignment for the second</p> <p>24 round of testing that you did for Trutek, what</p> <p>25 were you asked to do?</p>	<p style="text-align: right;">31</p> <p>1 selection to use pigskin as the substrate?</p> <p>2 A. No.</p> <p>3 Q. Okay.</p> <p>4 A. I'm not sure how that changes anything.</p> <p>5 Q. It doesn't change anything. I just</p> <p>6 wanted to know whether that was a request from</p> <p>7 Trutek or whether that was a decision that you</p> <p>8 made.</p> <p>9 And is the same true for the first round</p> <p>10 of testing, Trutek requested you to measure the</p> <p>11 charge of materials on pigskin specimens using</p> <p>12 your equipment?</p> <p>13 A. Yeah.</p> <p>14 Q. And did they also provide the pigskin</p> <p>15 samples to you for that first round of testing?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Were you told anything at the</p> <p>18 time about how Trutek would use the results of</p> <p>19 your testing?</p> <p>20 A. I don't believe so, no.</p> <p>21 Q. And apart from that basic instruction to</p> <p>22 measure the charge of materials on pigskin</p> <p>23 specimens using your equipment, were you asked to</p> <p>24 design the test in any particular way by Trutek?</p> <p>25 A. I don't remember them asking me to</p>
<p style="text-align: right;">30</p> <p>1 A. So I was asked by Trutek to measure the</p> <p>2 charge of materials that he would apply -- or that</p> <p>3 Trutek would apply to some pigskin specimens. And</p> <p>4 then basically these pigskin specimens with</p> <p>5 material applied to them would be used in my</p> <p>6 equipment to measure charge in nanocoulombs.</p> <p>7 Q. Okay. So you were specifically asked to</p> <p>8 measure the charge of the materials on pigskin</p> <p>9 specimens?</p> <p>10 A. I was measured -- I was measuring the</p> <p>11 charge of the materials and the pigskin specimens</p> <p>12 together. So in order to accurately do that, I</p> <p>13 believe we also measured the pigskin specimens by</p> <p>14 themselves or neutralized. At any rate, before</p> <p>15 applying the material, the pigskin specimens were</p> <p>16 neutralized using an ionizer.</p> <p>17 Q. Okay.</p> <p>18 A. So there would be no charge on the</p> <p>19 pigskin specimens.</p> <p>20 Q. Yeah. I guess I was wondering something</p> <p>21 a little bit different.</p> <p>22 You were instructed to use pigskin?</p> <p>23 A. The customer provided the pigskin.</p> <p>24 Q. Oh, okay.</p> <p>25 So it wasn't your choice or your</p>	<p style="text-align: right;">32</p> <p>1 change anything or alter anything from what's</p> <p>2 effectively a very common test. The one thing</p> <p>3 that was sort of, I suppose, different about it</p> <p>4 was that this was a fluid substance on pigskin,</p> <p>5 and so care had to be taken to make sure that, you</p> <p>6 know, there was no contamination or anything like</p> <p>7 that.</p> <p>8 Q. What do you mean?</p> <p>9 A. Well, you could, you know, touch the</p> <p>10 fluid or smear it on accident or something like</p> <p>11 that. So you have to be careful not to do that.</p> <p>12 Q. Oh, so you had to be careful to avoid</p> <p>13 contamination of the test samples?</p> <p>14 A. Yeah, you didn't want to -- for example,</p> <p>15 if you're holding the sample or the specimen, you</p> <p>16 don't want it to -- you don't want to get the</p> <p>17 fluid on your hands -- or get your hands on the</p> <p>18 fluid, rather, because your hands would act as a</p> <p>19 contaminant of the -- you know, what we were</p> <p>20 trying to test.</p> <p>21 Q. Okay. And going back to my original</p> <p>22 question about whether Trutek provided any other</p> <p>23 instructions, did they leave it to your discretion</p> <p>24 to determine how to prepare the samples?</p> <p>25 A. No, they had decided how they were going</p>

Transcript of Shane Burns

9 (33 to 36)

October 25, 2022

<p style="text-align: right;">33</p> <p>1 to cut the samples, and we were going to apply</p> <p>2 either a liquid or fluid of some kind on the</p> <p>3 surface. So they determined that.</p> <p>4 Q. Okay. What other instructions of that</p> <p>5 nature did Trutek give you for performing the</p> <p>6 test?</p> <p>7 A. I don't recall anything too specific. I</p> <p>8 tried to record anything I could in the test</p> <p>9 reports.</p> <p>10 Q. Do you keep lab notebooks?</p> <p>11 A. I keep test reports.</p> <p>12 Q. Okay. No, I understand that you have a</p> <p>13 test report that you prepared to summarize the</p> <p>14 testing once it was all complete, along with the</p> <p>15 results; right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And do you keep any other records</p> <p>18 associated with the testing?</p> <p>19 A. We keep data sheets, if there are data</p> <p>20 sheets on certain types of tests. We keep,</p> <p>21 obviously, the purchase orders from the customers.</p> <p>22 Any photographs that customers wish to provide, we</p> <p>23 try to keep those. And those are, of course, the</p> <p>24 property of the customer and are only available if</p> <p>25 the customer agrees to it. So the customer has to</p>	<p style="text-align: right;">35</p> <p>1 A. I had phone calls and e-mails from</p> <p>2 Mr. Wahi, but most of that was recorded in our</p> <p>3 electronic database or in the reports themselves.</p> <p>4 Q. So the electronic database that you</p> <p>5 mentioned, that would contain other records of</p> <p>6 information that's pertinent to the testing?</p> <p>7 A. Yeah, it would have been the customer</p> <p>8 name, number, contact information, the purchase</p> <p>9 order number, things like that.</p> <p>10 Q. And would it contain any notes about the</p> <p>11 scope of the testing or instructions for the</p> <p>12 testing?</p> <p>13 A. We have a notes section. Sometimes that</p> <p>14 contains some information, yes.</p> <p>15 Q. Okay. So going back to what</p> <p>16 instructions you received, you were given</p> <p>17 instructions to measure the charge of the</p> <p>18 materials on pigskin, and you were also given</p> <p>19 instructions on how to prepare the pigskin;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. What other instructions did you receive</p> <p>23 from Trutek or Mr. Wahi about how the testing</p> <p>24 should be conducted?</p> <p>25 A. In what way, what do you mean?</p>
<p style="text-align: right;">34</p> <p>1 be a consenting party to the release of any</p> <p>2 information that they provide us.</p> <p>3 Q. Okay. So I don't think you actually</p> <p>4 answered my question earlier, though.</p> <p>5 Do you keep lab notebooks?</p> <p>6 A. I don't have any documentation called a</p> <p>7 lab notebook that's saved or preserved anywhere,</p> <p>8 no.</p> <p>9 Q. Okay. So you do not have lab notebooks;</p> <p>10 is that correct?</p> <p>11 A. No, data is kept digitally on our secure</p> <p>12 server.</p> <p>13 Q. Okay.</p> <p>14 A. We don't keep data in notebooks.</p> <p>15 Q. Okay. So the raw data from the test was</p> <p>16 stored on a server; correct?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. And then you used that</p> <p>19 information to ultimately prepare the final</p> <p>20 report; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And as you were conducting the</p> <p>23 testing, did you have any other notes or written</p> <p>24 documents about the methods that you used to</p> <p>25 perform the testing?</p>	<p style="text-align: right;">36</p> <p>1 Q. Anything related to what was in your</p> <p>2 report? I mean, if --</p> <p>3 A. I tried to include everything.</p> <p>4 Q. I'm just interested in knowing what --</p> <p>5 what Trutek instructed you to do as opposed to</p> <p>6 what was your own -- like what elements of the</p> <p>7 testing was something that you devised on your</p> <p>8 own?</p> <p>9 A. Well, I try not to devise anything on my</p> <p>10 own in general. Most of the tests that we perform</p> <p>11 use some pretty standard equipment. So we're not,</p> <p>12 you know, trying to reinvent the wheel most of the</p> <p>13 time. We're trying to do things that people</p> <p>14 commonly do in the industry.</p> <p>15 Q. Okay.</p> <p>16 A. So what's included in the report is as</p> <p>17 much as possible what was specific to the test.</p> <p>18 Q. Okay. So, for example, you mentioned</p> <p>19 that the pigskin substrate was ionized; right?</p> <p>20 A. We had an ionizer, and we made sure that</p> <p>21 we neutralized any charge on the pigskin by using</p> <p>22 that ionizer, yes.</p> <p>23 Q. And did Mr. Wahi or anyone from Trutek</p> <p>24 request you to do that, or is that part of your</p> <p>25 procedure?</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 25, 2022

<p>37</p> <p>1 A. Well, that's something that you commonly</p> <p>2 do when you're performing any testing using a</p> <p>3 NanoCoulomb Meter.</p> <p>4 Q. Okay. So that's something that was your</p> <p>5 input to the test?</p> <p>6 A. Yes, I guess you can say that.</p> <p>7 Q. That wasn't an instruction that you</p> <p>8 received from Trutek?</p> <p>9 A. No. I don't believe so, no.</p> <p>10 Q. Okay. And then what about the sample</p> <p>11 preparation, so the amount of test sample that was</p> <p>12 applied to the pigskin, how was it determined how</p> <p>13 much of the sample should be applied?</p> <p>14 A. That was determined by Trutek.</p> <p>15 Q. Okay. And the amount of time in between</p> <p>16 sample preparation and placing the substrate in</p> <p>17 the test apparatus, was that provided by Trutek,</p> <p>18 or is that part of your process?</p> <p>19 A. We tested the sample immediately after</p> <p>20 test -- the sample is prepared.</p> <p>21 Q. Okay.</p> <p>22 A. That was the whole idea was to test the</p> <p>23 material. You know, if you waited, you have risk</p> <p>24 of the environment affecting the test specimen.</p> <p>25 So you can't wait. You test it immediately.</p>	<p>39</p> <p>1 of reliable, repeatable results. And there's a</p> <p>2 formula that you can use to find out how reliable</p> <p>3 a particular product or material is per the number</p> <p>4 of repetitions that you perform.</p> <p>5 And so, generally speaking, if you're</p> <p>6 just doing some kind of indication test, you can</p> <p>7 use three, but most test standards in the industry</p> <p>8 recommend six or more. So six was sort of the</p> <p>9 bare minimum that I think is -- or that most</p> <p>10 industry standards indicate is needed for good</p> <p>11 reliable results. And if you have six, then you</p> <p>12 can record your minimum, maximum, and average and</p> <p>13 from there figure out whether or not this is</p> <p>14 something that you can rely on, this data you can</p> <p>15 rely on.</p> <p>16 Q. Okay. It looks like for this particular</p> <p>17 test you had three data points for each product;</p> <p>18 correct?</p> <p>19 A. I think so. Yeah, this is an</p> <p>20 indication -- more of an indication test.</p> <p>21 Q. What do you mean by an indication test?</p> <p>22 A. An indication test uses usually three</p> <p>23 specimens.</p> <p>24 Q. Yeah, I understand that. But what is an</p> <p>25 indication test?</p>
<p>38</p> <p>1 Q. Okay. And then the results. So they</p> <p>2 were reported in terms of the total surface</p> <p>3 electric charge as well as charge per square. Did</p> <p>4 Trutek request that the results be reported in</p> <p>5 that manner, or is that how you decided to report</p> <p>6 them?</p> <p>7 A. Yeah, they -- I believe that they wanted</p> <p>8 somehow to quantify the material in terms of</p> <p>9 relating the charge we measured to the amount or</p> <p>10 surface area of material that could be spread on</p> <p>11 the substrate, the pigskin.</p> <p>12 Q. Okay.</p> <p>13 A. So I think that that was something that</p> <p>14 they really were desirous to have.</p> <p>15 Q. Okay. And then in terms of, like, how</p> <p>16 many samples were tested or the number of</p> <p>17 replicates for each sample, did that instruction</p> <p>18 come from Trutek, or was that part of your design</p> <p>19 of the study?</p> <p>20 A. So I typically try to recommend that if</p> <p>21 a customer is trying to collect data on a product,</p> <p>22 that they use at least six data points. And</p> <p>23 there's a reason for that. So there is something</p> <p>24 called an AQL that is commonly used in</p> <p>25 manufacturing and industry to try to get some kind</p>	<p>40</p> <p>1 A. It's just exactly that. They use three</p> <p>2 specimens instead of, say, one or six.</p> <p>3 Q. And what is the word "indication" -- I</p> <p>4 mean, what's the relevance of that word to a --</p> <p>5 A. Indication is that you have a test that</p> <p>6 you've performed. It's not performed during the</p> <p>7 manufacturing process on a regular basis every</p> <p>8 day, and it's also not something that you're</p> <p>9 necessarily performing for the purposes of, say, a</p> <p>10 round robin study, okay, for say creating an</p> <p>11 industry standard. So it's an indication of the</p> <p>12 characteristics of the material that the customer</p> <p>13 can then take that information and then use it for</p> <p>14 their own purposes.</p> <p>15 Q. Got it.</p> <p>16 And did you recommend to Trutek that --</p> <p>17 I think you said that six replicates is usually</p> <p>18 what you recommend. Is that what you recommended</p> <p>19 here?</p> <p>20 A. You try to get as many replicates as you</p> <p>21 possibly can.</p> <p>22 Q. And so why did you only use three in</p> <p>23 this instance?</p> <p>24 A. Probably because that's about how much</p> <p>25 pigskin we've had. Although, they may have just</p>

Transcript of Shane Burns

11 (41 to 44)

October 25, 2022

<p>41</p> <p>1 needed three data points for the purposes of</p> <p>2 knowing what the characteristics were of their</p> <p>3 material. You can do 100 data points, and it</p> <p>4 doesn't change necessarily what the material is</p> <p>5 like or how it's going to behave.</p> <p>6 Q. So you advised Trutek that there would</p> <p>7 be three replicates, and they were okay with that?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay.</p> <p>10 A. I believe so.</p> <p>11 Q. Were you told anything else by Trutek</p> <p>12 about the sample products other than that they</p> <p>13 were a solution and a spray containing permanently</p> <p>14 ionized molecules?</p> <p>15 MR. KREMEN: Objection to the form of</p> <p>16 the question.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: I was told by Trutek that</p> <p>19 this was a cationically charged substance or a</p> <p>20 charged substance, but that didn't matter to me.</p> <p>21 Ultimately, all I need to know is that I have a</p> <p>22 substance and I need to perform a test and I'm</p> <p>23 going to provide them results of the test.</p> <p>24 BY MS. PETERSON:</p> <p>25 Q. Okay.</p>	<p>43</p> <p>1 may answer.</p> <p>2 THE WITNESS: They wanted to explain why</p> <p>3 they were using pigskin as a substrate.</p> <p>4 BY MS. PETERSON:</p> <p>5 Q. Okay.</p> <p>6 A. Or skin at all. It didn't really -- it</p> <p>7 was sort of an odd substrate. So I suppose I must</p> <p>8 have asked about it, and they explained that to</p> <p>9 me.</p> <p>10 Q. Fair enough.</p> <p>11 So what did they explain to you about</p> <p>12 why they wanted to use pigskin?</p> <p>13 A. It's similar enough, I guess, to human</p> <p>14 skin. That was their explanation.</p> <p>15 Q. Okay. So you said that pigskin or skin</p> <p>16 at all, it was sort of an odd substrate; right?</p> <p>17 MR. KREMEN: Objection to the form.</p> <p>18 You may answer.</p> <p>19 THE WITNESS: It's unique certainly. I</p> <p>20 don't have a lot of people coming in with any kind</p> <p>21 of pigskin as a substrate.</p> <p>22 BY MS. PETERSON:</p> <p>23 Q. Have you ever conducted any testing over</p> <p>24 the course of your career using pigskin as a</p> <p>25 substrate?</p>
<p>42</p> <p>1 A. I don't really need to know what they're</p> <p>2 using it for or what the substance even</p> <p>3 necessarily is other than how to properly handle</p> <p>4 it.</p> <p>5 Q. Okay. Were you told that the test</p> <p>6 substances were pharmaceutical products?</p> <p>7 A. I was not aware that they were</p> <p>8 pharmaceutical in nature --</p> <p>9 Q. Okay.</p> <p>10 A. -- necessarily.</p> <p>11 Q. Were you -- well, what do you mean by</p> <p>12 "not necessarily"?</p> <p>13 A. Well, I don't know. I don't know what</p> <p>14 the materials were for. So, you know -- I know</p> <p>15 one was a gel and one was a spray, and to me it</p> <p>16 doesn't matter what the purposes of that material</p> <p>17 is, how does that affect the test.</p> <p>18 Q. Okay. Fair enough. I understand.</p> <p>19 Were you told by Trutek that the test</p> <p>20 products were intended to be used for</p> <p>21 administration to human skin?</p> <p>22 A. They did mention that, yes.</p> <p>23 Q. Okay. And did they -- why did they tell</p> <p>24 you that?</p> <p>25 MR. KREMEN: Objection to the form. You</p>	<p>44</p> <p>1 A. Well, typically, people aren't testing</p> <p>2 biologics. So it's not really a surprise to me</p> <p>3 that I wouldn't have had that before, but that's,</p> <p>4 you know, an easy explanation.</p> <p>5 Q. Okay. Is that because your testing</p> <p>6 typically involves, like, electronics equipment,</p> <p>7 not biologic or pharmaceutical products?</p> <p>8 MR. KREMEN: Objection to the form of</p> <p>9 the question.</p> <p>10 You may answer.</p> <p>11 THE WITNESS: This kind of testing where</p> <p>12 you are using a NanoCoulomb Meter and a Faraday</p> <p>13 cup, all kinds of substances are tested. I've had</p> <p>14 everything from carbon powders to peanut butter,</p> <p>15 believe it or not. So what the material is does</p> <p>16 not change how the test is performed necessarily</p> <p>17 except in how to handle it, in how to handle the</p> <p>18 material.</p> <p>19 BY MS. PETERSON:</p> <p>20 Q. Okay. Well, when I asked you -- let me</p> <p>21 ask you the question again. Have you ever</p> <p>22 conducted any testing over the course of your</p> <p>23 career using pigskin as a substrate?</p> <p>24 A. No.</p> <p>25 Q. No.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

12 (45 to 48)

October 25, 2022

<p>45</p> <p>1 And then you said that it's not</p> <p>2 surprising that I wouldn't have had that before</p> <p>3 because typically people aren't testing biologics.</p> <p>4 What did you mean by that?</p> <p>5 A. Well, people test all kinds of things,</p> <p>6 but not usually things that are going to be used</p> <p>7 on a person or -- I have had a handful of tests</p> <p>8 that involved the pharmaceutical industry, but</p> <p>9 it's unusual when it occurs, but it happens from</p> <p>10 time to time.</p> <p>11 Q. Okay. And to the best of your</p> <p>12 recollection, is this the only instance when you</p> <p>13 were asked to test a pharmaceutical product that</p> <p>14 was going to be administered to human skin?</p> <p>15 A. As far as I --</p> <p>16 MR. KREMEN: Objection to form.</p> <p>17 THE WITNESS: Go ahead.</p> <p>18 MR. KREMEN: Go ahead, answer.</p> <p>19 THE WITNESS: As far as I know, I don't</p> <p>20 think I have tested anything like this. I have</p> <p>21 tested other things that were applied to human</p> <p>22 skin. I've tested lotions, but not in this way.</p> <p>23 And I've tested perfumes -- we've tested perfumes</p> <p>24 as a company. And that also was tested a little</p> <p>25 differently from this.</p>	<p>47</p> <p>1 consistently.</p> <p>2 Q. Okay. And why was it important to</p> <p>3 control the quantity of the fluid or the gel that</p> <p>4 was applied?</p> <p>5 A. I don't know, and it doesn't matter.</p> <p>6 Q. Okay. Well, you said it was important.</p> <p>7 A. It was important to the customer.</p> <p>8 Q. Was it important to you? Okay.</p> <p>9 A. It was important to the customer.</p> <p>10 Q. So Trutek told you it was important to</p> <p>11 control the quantity of the test sample that's</p> <p>12 applied to the substrate?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And for the second round of</p> <p>15 testing, you said you were provided containers</p> <p>16 with specified volumes? Is that what you said?</p> <p>17 A. Yeah, they had some small tubes of</p> <p>18 material with -- sometimes with a swab or</p> <p>19 applicator already inside of the tube --</p> <p>20 Q. Okay.</p> <p>21 A. -- I believe.</p> <p>22 Q. So the containers that you received from</p> <p>23 Trutek had just a specific amount of volume in</p> <p>24 them, and you were instructed to take that entire</p> <p>25 volume of material and apply it to the test</p>
<p>46</p> <p>1 BY MS. PETERSON:</p> <p>2 Q. Okay.</p> <p>3 A. Because they were looking for different</p> <p>4 characteristics. They were not concerned about</p> <p>5 charge.</p> <p>6 Q. Okay.</p> <p>7 A. So charge is not typically something</p> <p>8 that people are looking to measure when it comes</p> <p>9 to things that are applied to a skin.</p> <p>10 Q. Understood. Thank you.</p> <p>11 Now, when you were contacted to conduct</p> <p>12 the second round of testing by Trutek, were you</p> <p>13 asked to modify the test procedure at all?</p> <p>14 A. I don't recall any specific changes. I</p> <p>15 know that there was -- the second round, there was</p> <p>16 an attempt to provide more consistency in the</p> <p>17 amount of material applied. So that was really</p> <p>18 important. Because the first time, you know,</p> <p>19 other than controlling the surface area it was</p> <p>20 applied to, the actual quantity of fluid or gel</p> <p>21 applied was difficult to control.</p> <p>22 So the second time we had some</p> <p>23 containers of specified volumes, I believe, that</p> <p>24 were provided. And so that allowed us to control</p> <p>25 the quantity of material a little bit more</p>	<p>48</p> <p>1 substrate?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So you were --</p> <p>4 A. After the substrate had been</p> <p>5 neutralized.</p> <p>6 Q. Of course.</p> <p>7 So the containers that you were provided</p> <p>8 by Trutek, they weren't the original containers</p> <p>9 that the product was sold in; right?</p> <p>10 A. I don't know. They looked like, I don't</p> <p>11 know, what you would call samples.</p> <p>12 Q. Did they have any type of labeling on</p> <p>13 them?</p> <p>14 A. I don't remember. There were -- they</p> <p>15 probably -- yeah, I think they did. I think they</p> <p>16 may have had some small amount of printing on</p> <p>17 them.</p> <p>18 Q. Did it look like labeling that would be</p> <p>19 on a commercial product that would be sold to a</p> <p>20 customer, or did it look like a label that was</p> <p>21 just printed out with a name and a volume?</p> <p>22 A. I don't know that it had the volume</p> <p>23 printed on it.</p> <p>24 Q. Okay. But did it look like a --</p> <p>25 A. They knew what the volume was, though.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

13 (49 to 52)

October 25, 2022

<p>49</p> <p>1 Q. Okay. So the containers you were</p> <p>2 provided had a preset volume that matched the</p> <p>3 amount that you applied to the substrate in the</p> <p>4 case -- in the test; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And it had a label on it, and</p> <p>7 that label --</p> <p>8 A. May have had a label on it.</p> <p>9 Q. May have had a label.</p> <p>10 A. I don't know that they all had labels</p> <p>11 even. If they did, it seems like some of them</p> <p>12 didn't.</p> <p>13 Q. Okay.</p> <p>14 A. But they knew which ones were which.</p> <p>15 Q. And how did you keep track of which ones</p> <p>16 were which during the test?</p> <p>17 A. I believe they were separated physically</p> <p>18 from one another, either in Ziploc bags or in</p> <p>19 separate groups. And I believe the Ziploc bags</p> <p>20 were alphanumerically labeled. And so it was</p> <p>21 pretty clear which ones went with which group.</p> <p>22 Q. Okay.</p> <p>23 A. At the time, yeah.</p> <p>24 Q. Okay. Do you have photos of the samples</p> <p>25 and the containers that you were provided for the</p>	<p>51</p> <p>1 pigskin looked like after it was cut up?</p> <p>2 A. No, I don't think so.</p> <p>3 Q. Do you have any photos of what the</p> <p>4 pigskin looked like after the test samples were</p> <p>5 applied to it?</p> <p>6 A. No, I don't believe so.</p> <p>7 Q. And did you apply the test samples to</p> <p>8 the pigskin directly, or did someone from Trutek</p> <p>9 handle the application?</p> <p>10 A. I had the customer apply the samples</p> <p>11 themselves, and I watched them do it so that we</p> <p>12 could keep track of -- it helped having more than</p> <p>13 one person to keep track of which one was which.</p> <p>14 Q. And why did you have Trutek personnel</p> <p>15 apply the samples rather than doing it yourself?</p> <p>16 A. They were their samples.</p> <p>17 Q. Okay. So that wasn't unusual to you at</p> <p>18 all to have the customer not just observe the test</p> <p>19 but also directly participate in the test and --</p> <p>20 A. It's very common.</p> <p>21 Q. -- perform steps of the test?</p> <p>22 A. Yes, that's very common.</p> <p>23 Q. Okay. Are there any other aspects of</p> <p>24 the test that the Trutek personnel handled</p> <p>25 themselves as opposed to you?</p>
<p>50</p> <p>1 second round of testing?</p> <p>2 A. I was not asked to take any photographs</p> <p>3 of those particular specimens for this purpose.</p> <p>4 Q. Okay.</p> <p>5 A. And they were -- some of the containers</p> <p>6 once broken up and emptied were useless anyway.</p> <p>7 So they were just thrown away.</p> <p>8 Q. Some of the containers when you received</p> <p>9 them were already broken --</p> <p>10 A. No, no. No. No, not when we received</p> <p>11 them. After they had been used, they were</p> <p>12 obviously emptied of fluid. So there was no</p> <p>13 reason to keep them or photograph them. So they</p> <p>14 were simply thrown in the trash.</p> <p>15 Q. Okay. Did you take any photos of the</p> <p>16 pigskin substrate that you received from Trutek?</p> <p>17 A. Other than what's in the report?</p> <p>18 Q. Correct.</p> <p>19 A. No, I think I tried to include any</p> <p>20 photographs of the pigskin in the report.</p> <p>21 Q. Okay.</p> <p>22 A. Some dotted lines or something were</p> <p>23 included to show how we cut the pieces up of the</p> <p>24 pigskin.</p> <p>25 Q. So do you have any photos of what the</p>	<p>52</p> <p>1 A. No, the handling -- the working of the</p> <p>2 machine itself was handled by me.</p> <p>3 Q. Who cut the pigskin?</p> <p>4 A. And I recorded the data.</p> <p>5 I believe that Trutek cut the pigskin.</p> <p>6 So they were the same size, roughly.</p> <p>7 Q. Were the pigskin samples measured after</p> <p>8 they were cut?</p> <p>9 A. Yeah, I believe we did measure them.</p> <p>10 Q. Did you measure them, or did the Trutek</p> <p>11 personnel measure them?</p> <p>12 A. I believe I measured them.</p> <p>13 Q. And how were those measurements</p> <p>14 recorded?</p> <p>15 A. I believe it's in the test report how</p> <p>16 big the test substrates were.</p> <p>17 Q. There's an approximate measurement, but</p> <p>18 I'm asking did you record the actual measurements</p> <p>19 that you took after each of the pigskin samples</p> <p>20 were cut?</p> <p>21 A. No.</p> <p>22 MR. KREMEN: Objection to form.</p> <p>23 You may answer.</p> <p>24 THE WITNESS: No, I don't think I</p> <p>25 recorded the precise measurements.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

14 (53 to 56)

October 25, 2022

<p>53</p> <p>1 BY MS. PETERSON:</p> <p>2 Q. Okay. So for the first round of testing</p> <p>3 that you did, were you provided containers of the</p> <p>4 test samples with a preset amount of material in</p> <p>5 each sample container?</p> <p>6 A. You said for the first round?</p> <p>7 Q. For the first round, yes.</p> <p>8 A. No. On the different materials they</p> <p>9 tested in -- I believe it was 2019, those</p> <p>10 materials were, I believe, in larger containers.</p> <p>11 Q. Okay. And did they --</p> <p>12 A. Slightly larger containers, yeah.</p> <p>13 Q. Sure.</p> <p>14 Did they contain the type of, like,</p> <p>15 printing and labeling that had you would typically</p> <p>16 expect to see on a product that would be purchased</p> <p>17 commercially?</p> <p>18 A. I believe one did. The others were in</p> <p>19 sort of white, blank containers.</p> <p>20 Q. Okay. But for the second round of</p> <p>21 testing that you did, the test samples were</p> <p>22 provided to you by Trutek in generic, blank</p> <p>23 containers that may have had some other label</p> <p>24 printed on it; is that right?</p> <p>25 A. I don't know that they were generic</p>	<p>55</p> <p>1 what the retail version looks like.</p> <p>2 Q. I mean, did it have, like, a logo</p> <p>3 printed on it, or did it just -- was it just a</p> <p>4 general container?</p> <p>5 A. I don't think it was what would be</p> <p>6 called a general container, but I don't recall</p> <p>7 specifically any logos being printed on it.</p> <p>8 Q. Okay. So you can't say for sure whether</p> <p>9 or not the samples you received were, you know,</p> <p>10 samples that would have been available for retail</p> <p>11 purchase and not opened and unmodified? You can't</p> <p>12 say that for certain one way or the other?</p> <p>13 MR. KREMEN: Objection to the form.</p> <p>14 You may answer.</p> <p>15 THE WITNESS: Well, the second round of</p> <p>16 testing, several of the containers, they could not</p> <p>17 have been opened. Because you literally broke off</p> <p>18 the end of them, I believe, to remove the</p> <p>19 applicator.</p> <p>20 BY MS. PETERSON:</p> <p>21 Q. Okay. And were those the Trutek</p> <p>22 NasalGuard samples or the BlueWillow --</p> <p>23 A. I don't know.</p> <p>24 Q. -- NanoBio Protect samples?</p> <p>25 A. I don't remember which was which.</p>
<p>54</p> <p>1 containers. They looked like -- I mean, they were</p> <p>2 small, and you sort of -- on some of them you</p> <p>3 snapped off the end to remove the applicator that</p> <p>4 was inside of them. Of course, once you -- you</p> <p>5 remove the applicators and, of course, once you</p> <p>6 did that, it was -- basically you applied it, and</p> <p>7 then that was it. It was, I believe, single-use</p> <p>8 sort of containers.</p> <p>9 Q. Okay. Did it look like something</p> <p>10 that -- like if you were to go online to Amazon</p> <p>11 and purchase one of Trutek's NasalGuard products,</p> <p>12 I mean, is that what the container looked like to</p> <p>13 you?</p> <p>14 A. I'm going to be totally honest with you,</p> <p>15 I have no idea what Trutek's products look like</p> <p>16 when they're being sold on Amazon.</p> <p>17 Q. Okay.</p> <p>18 A. I've never seen the retail version of</p> <p>19 whatever it is that it comes in.</p> <p>20 Q. Fair enough.</p> <p>21 So did the containers you received, did</p> <p>22 they look like a retail version, or did it look</p> <p>23 like --</p> <p>24 A. How would I answer that? No, I don't</p> <p>25 know what it looks like. I'm sorry, I don't know</p>	<p>56</p> <p>1 Q. Okay. So some of the -- for the second</p> <p>2 round of testing, some of the containers could not</p> <p>3 have been opened, but that statement, that -- that</p> <p>4 just applies to some of the containers?</p> <p>5 A. Yeah, I mean, some of them were -- I</p> <p>6 guess you could say you squeezed it out or</p> <p>7 something like that and -- you know, there was</p> <p>8 like a small tube or something like that that they</p> <p>9 were in. And they weren't really -- they didn't</p> <p>10 seem to me like they had been tampered with, if</p> <p>11 that's what you're asking.</p> <p>12 Q. Yeah, I'm not suggesting that they were</p> <p>13 tampered with.</p> <p>14 A. I'm misunderstanding what the --</p> <p>15 Q. Okay. Let me back up.</p> <p>16 So this all goes back to when you said</p> <p>17 that the Trutek had a desire to ensure that there</p> <p>18 was more consistency in the amount applied.</p> <p>19 Do you remember that?</p> <p>20 A. Yeah. Yeah.</p> <p>21 Q. And so you were given samples in</p> <p>22 containers that had a preset amount?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And was that preset amount, I</p> <p>25 mean, do you know if that was different than the</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

15 (57 to 60)

October 25, 2022

<p>1 amount in the typical retail version?</p> <p>2 A. No.</p> <p>3 MR. KREMEN: Objection to the form.</p> <p>4 THE WITNESS: I wouldn't know that.</p> <p>5 BY MS. PETERSON:</p> <p>6 Q. Okay.</p> <p>7 A. I don't know what the retail version</p> <p>8 looks like.</p> <p>9 Q. Sure.</p> <p>10 And so what I -- do you know if Trutek</p> <p>11 prepared the samples in these containers for</p> <p>12 use -- specifically for use in the testing, or</p> <p>13 were these, you know, off-the-shelf samples of the</p> <p>14 product?</p> <p>15 MR. KREMEN: Objection to the form of</p> <p>16 the question.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 BY MS. PETERSON:</p> <p>20 Q. Okay. Fair enough. That's fine. If</p> <p>21 you don't know, you don't know.</p> <p>22 So you have no idea if these were</p> <p>23 off-the-shelf products or if they were prepared</p> <p>24 specifically for the testing?</p> <p>25 MR. KREMEN: Asked and answered.</p>	<p>57</p> <p>1 point right now. How about we go off the record.</p> <p>2 THE VIDEOGRAPHER: We're going off the</p> <p>3 record. The time is now 11:29 a.m.</p> <p>4 (Recess from the record.)</p> <p>5 THE VIDEOGRAPHER: We're back on the</p> <p>6 record. The time is now 11:45 a.m.</p> <p>7 THE WITNESS: I did get that information</p> <p>8 for you. If it's all right from Mr. Wahi to share</p> <p>9 this information, I can share it with you.</p> <p>10 BY MS. PETERSON:</p> <p>11 Q. You're talking about the --</p> <p>12 A. The cost.</p> <p>13 Q. Okay.</p> <p>14 MS. PETERSON: Stan, do you have any</p> <p>15 objection to that?</p> <p>16 MR. KREMEN: Ashok, could you unmute,</p> <p>17 please?</p> <p>18 MR. WAHI: No, I don't have any</p> <p>19 objection.</p> <p>20 MR. KREMEN: Okay. Neither do I. You</p> <p>21 can mute again.</p> <p>22 THE WITNESS: So if you'd like to know,</p> <p>23 the cost of custom testing is \$300 per hour. And</p> <p>24 it is what we charged him for both tests. And</p> <p>25 that was for three hours on July 30th and for</p>
<p>1 You may answer.</p> <p>2 THE WITNESS: I don't know how I would</p> <p>3 know that.</p> <p>4 BY MS. PETERSON:</p> <p>5 Q. I mean, perhaps someone from Trutek</p> <p>6 explained that to you?</p> <p>7 MR. KREMEN: Objection.</p> <p>8 You may answer.</p> <p>9 THE WITNESS: They didn't tell me how</p> <p>10 they got the samples or how they put them in the</p> <p>11 containers.</p> <p>12 BY MS. PETERSON:</p> <p>13 Q. Okay. Did they --</p> <p>14 A. They brought containers and told me what</p> <p>15 they wanted them to be labeled as, and so that is</p> <p>16 how I labeled them in the test report.</p> <p>17 Q. Okay. Did Trutek explain to you how</p> <p>18 they were preparing the samples in order to ensure</p> <p>19 the consistency in the amount applied for the</p> <p>20 second round of testing?</p> <p>21 A. Well, I watched them apply it. I don't</p> <p>22 know how they had prepared it before they gave me</p> <p>23 the containers.</p> <p>24 Q. Okay.</p> <p>25 MS. PETERSON: I'm at a good breaking</p>	<p>58</p> <p>1 two hours -- that's July 30th of 2019. And for</p> <p>2 two hours on June 13th of 2021 -- or January,</p> <p>3 sorry, not June. My A looks like a U.</p> <p>4 January 13th of 2021. I apologize.</p> <p>5 BY MS. PETERSON:</p> <p>6 Q. Okay. So that first time frame billed</p> <p>7 of three hours, that would be for the first round</p> <p>8 of testing?</p> <p>9 A. That's correct.</p> <p>10 Q. And then the second amount of time of</p> <p>11 two hours, that would be for the second round of</p> <p>12 testing?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And did you bill them any further</p> <p>15 time for preparation of the report, or is that</p> <p>16 included in those time frames?</p> <p>17 A. So normally these days we would be</p> <p>18 charging them for the report, but at that time for</p> <p>19 some reason we waived it.</p> <p>20 Q. Okay. So the total amount that you've</p> <p>21 billed to Trutek is five hours at a rate of \$300</p> <p>22 per hour?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Thank you for that.</p> <p>25 Before the break -- actually, let me</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

16 (61 to 64)

October 25, 2022

<p>61</p> <p>1 just ask you while we were on the break just now, 2 did you speak to anyone about the substance of the 3 testimony that you provided so far? 4 A. No. 5 Q. So you didn't speak with Mr. Kremen or 6 Mr. Wahi during the break? 7 A. I went to the bathroom. 8 Q. Okay. Thank you. I did, too, if we're 9 sharing. 10 Okay. Before the break, we were talking 11 about changes that you made from the first round 12 of testing to the second round of testing. And 13 you mentioned ensuring the consistency in the 14 amount applied. Were there any other changes to 15 the testing for the second round? 16 A. I don't recall any specific changes 17 other than anything that was mentioned in the 18 report. The point of the report is so that I 19 would be able to record anything that was a 20 deviation or so that it's in writing so you could 21 go back and refer to it. 22 Q. Okay. So the purpose for the report is 23 to document any changes that were made to the 24 testing procedure? 25 A. As well as the results and any</p>	<p>63</p> <p>1 A. So it's mostly electrostatic 2 characterization testing, not whatever else other 3 information that may be there. If they wish to 4 provide other information, I can record it, but 5 the point of the test that we were providing was 6 electrostatic characterization. 7 Q. Sure. 8 But you would agree, though, that the 9 manner in which the samples were prepared is also 10 important to the testing and the results that are 11 obtained from the testing; right? 12 A. Sure. 13 Q. Now, specifically with respect to the 14 pigskin substrate that was used in the testing, 15 did you handle the pigskin at all over the course 16 of the second round of testing? 17 A. Yeah, there's a pair of plastic tongs. 18 They're regular tongs that you can get at the 19 dollar store. And those were the main thing I 20 believe that we handled them with. And I believe 21 I also had gloves. But by and large, we were 22 trying to hold them with the plastic tongs to 23 neutralize in front of the ionizer and then 24 provide the substance and -- 25 Q. Okay. So, for example, when the</p>
<p>62</p> <p>1 conclusions that might be drawn from it, yes. 2 Q. Okay. So if there were any other 3 changes to the testing procedure in the second 4 round, it would be reflected in your report? 5 Is that a "yes"? 6 A. Yes, I'm sorry. 7 Q. That's okay. 8 A. Verbal, yeah. 9 Q. Do you recall whether you documented 10 anything about the need to maintain consistency in 11 the amount applied when preparing your second 12 report? 13 A. I don't remember documenting that in the 14 report. If it's there, then that's fine. But it 15 was the purpose of the customer to have that 16 controlled. I didn't place that requirement on 17 them. 18 Q. So the report doesn't necessarily 19 document everything that the customer provided 20 input on then. Is that what you're saying? 21 A. No, my job with the report was mostly as 22 much as possible to record things that the 23 customer provided to me that they wanted in the 24 report, but also the data as I recorded it. 25 Q. Okay.</p>	<p>64</p> <p>1 substrates were transferred into the apparatus, 2 did you do that, or did the Trutek personnel do 3 that? 4 A. I did that. 5 Q. Okay. 6 MS. PETERSON: Let's mark Mr. Burns' 7 report for BlueWillow as Exhibit No. 24 [sic]. 8 (Burns Deposition Exhibit 23 was marked 9 for identification and attached to the 10 transcript.) 11 MR. KREMEN: The last one was 21. 12 MS. PETERSON: No, I think the last 13 exhibit we used yesterday was 22, Stan. 14 MR. KREMEN: 22 was the -- 15 THE REMOTE TECHNICIAN: Yes, that's -- 16 that's correct, counsel. 17 THE WITNESS: I'm sorry, what report for 18 BlueWillow? I don't recall working for 19 BlueWillow. 20 BY MS. PETERSON: 21 Q. Let me -- yeah, I should have explained 22 this to you. So, Mr. Burns, I have some documents 23 I'm going to show you. We're going to mark them 24 with exhibit numbers. They're going to be 25 displayed on the screen so you can see them. And</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

17 (65 to 68)

October 25, 2022

<p>65</p> <p>1 at the same time we're also going to put copies of</p> <p>2 them into the chat window. So if you want to, you</p> <p>3 can open them up directly on your own to look</p> <p>4 through them; or if you would rather just have us,</p> <p>5 you know, scroll through the document on the</p> <p>6 screen.</p> <p>7 A. I have copies of the reports.</p> <p>8 Q. Okay. Well, if you have copies sitting</p> <p>9 there right in front of you, you're free to look</p> <p>10 at those, too. But we are going to display them</p> <p>11 on the screen just so that everybody can make sure</p> <p>12 we're looking at the correct document.</p> <p>13 A. Right. My question was not how -- my</p> <p>14 question was which report is being referred to as</p> <p>15 the one as pertains to BlueWillow?</p> <p>16 Q. Yeah, and just to clarify again, I</p> <p>17 described it that way so that the deposition</p> <p>18 technician could find it. I'll further identify</p> <p>19 it on the record for you, Mr. Burns, so that you</p> <p>20 can make sure you have the right one.</p> <p>21 A. Thank you.</p> <p>22 MS. PETERSON: So, Jennifer, let's pull</p> <p>23 up the document -- it has my item number 03.</p> <p>24 THE REMOTE TECHNICIAN: Yes, I see it.</p> <p>25 Stand by, please.</p>	<p>67</p> <p>1 BlueWillow report because this is the round of</p> <p>2 testing where you tested the BlueWillow NanoBio</p> <p>3 Protect product; right?</p> <p>4 A. Sure, if that's what the report says.</p> <p>5 MS. PETERSON: Okay. Let's scroll down</p> <p>6 to page 5.</p> <p>7 BY MS. PETERSON:</p> <p>8 Q. Okay. Do you see up here the product</p> <p>9 test samples are listed?</p> <p>10 A. Yes.</p> <p>11 Q. And the first product is TTK-NS, which</p> <p>12 is NasalGuard misting spray, and then the second</p> <p>13 product is BW-NBP, BlueWillow NanoBio Protect;</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So this is the report that we've</p> <p>17 been talking about in terms of the second round of</p> <p>18 testing; right?</p> <p>19 A. Yes.</p> <p>20 MS. PETERSON: Okay. And I see -- if we</p> <p>21 go to the second page. And maybe we can just go</p> <p>22 out to the full screen view, I mean, just to show</p> <p>23 the entire -- yeah, there we go.</p> <p>24 BY MS. PETERSON:</p> <p>25 Q. So here is one photo included. And this</p>
<p>66</p> <p>1 BY MS. PETERSON:</p> <p>2 Q. Okay. And for the record, this is a</p> <p>3 document titled "Surface Electrostatic Charge</p> <p>4 Evaluation of Nasal Application Products Technical</p> <p>5 Report." And it has a report issue date of</p> <p>6 January 18, 2021.</p> <p>7 MS. PETERSON: And we will mark this as</p> <p>8 Deposition Exhibit 23.</p> <p>9 MR. KREMEN: 23.</p> <p>10 BY MS. PETERSON:</p> <p>11 Q. So, Mr. Burns, do you recognize this</p> <p>12 report that we have marked as Exhibit 23?</p> <p>13 A. Yeah. Yes.</p> <p>14 Q. Okay. And this is the report that you</p> <p>15 prepared --</p> <p>16 MS. PETERSON: Could we put it back up</p> <p>17 on the screen, please.</p> <p>18 THE REMOTE TECHNICIAN: Yes, I'm sorry,</p> <p>19 Counsel. That was a mistake.</p> <p>20 MS. PETERSON: That's okay.</p> <p>21 BY MS. PETERSON:</p> <p>22 Q. Mr. Burns, this is the report that you</p> <p>23 prepared for the second round of testing; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And I referred to this as the</p>	<p>68</p> <p>1 is a photo of the NanoCoulomb Meter that you used?</p> <p>2 A. NanoCoulomb Meter, yes.</p> <p>3 Q. NanoCoulomb Meter. Thank you for that.</p> <p>4 Okay.</p> <p>5 MS. PETERSON: Second page -- or sorry,</p> <p>6 go to the next page, page 3.</p> <p>7 BY MS. PETERSON:</p> <p>8 Q. There's another photo of the Faraday cup</p> <p>9 that you used in the test; is that right?</p> <p>10 A. Yes.</p> <p>11 MS. PETERSON: And then let's go to</p> <p>12 page 4.</p> <p>13 BY MS. PETERSON:</p> <p>14 Q. And here --</p> <p>15 A. Right.</p> <p>16 Q. -- there is a depiction of the pigskin.</p> <p>17 Is this an actual photo of the pigskin sample?</p> <p>18 A. So I think this one was -- I can't</p> <p>19 remember. I think this is a diagram mostly to</p> <p>20 show how he cut it up.</p> <p>21 Q. Okay.</p> <p>22 MS. PETERSON: And then if we go to the</p> <p>23 next page.</p> <p>24 BY MS. PETERSON:</p> <p>25 Q. Here we have the results that you</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

18 (69 to 72)

October 25, 2022

<p>69</p> <p>1 report; correct?</p> <p>2 A. Yeah.</p> <p>3 Q. And then go to the last page. And here</p> <p>4 we have the conclusions; right?</p> <p>5 A. Correct.</p> <p>6 Q. So I see two photos in total in this</p> <p>7 report; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. Do you know if you took any other photos</p> <p>10 during the course of the second round of testing</p> <p>11 that were not included in this report?</p> <p>12 A. I don't believe so, no.</p> <p>13 Q. And feel free to look at your own</p> <p>14 version of the report or take a look at it</p> <p>15 directly through the chat, but I don't see that</p> <p>16 you recorded anywhere in this report who else</p> <p>17 attended or participated in the testing; is that</p> <p>18 right?</p> <p>19 A. No, I don't see why that would be</p> <p>20 necessary.</p> <p>21 Q. So just to confirm, you did not include</p> <p>22 in your report the fact that there were personnel</p> <p>23 from Trutek present at the testing; right?</p> <p>24 A. That's correct. I did not record anyone</p> <p>25 else as having been present at the test.</p>	<p>71</p> <p>1 perform steps of the test?</p> <p>2 A. The main test technician is recorded.</p> <p>3 The test technician is recorded in the test, yes.</p> <p>4 Q. And if other people perform steps of the</p> <p>5 process, would it be common to include their names</p> <p>6 and to indicate what steps they performed?</p> <p>7 A. That depends on the steps. If you're</p> <p>8 talking about providing samples or providing</p> <p>9 materials or preparing samples, no. Every</p> <p>10 customer sends me samples that they prepared, and</p> <p>11 then I perform tests on the samples.</p> <p>12 Q. Have you ever had --</p> <p>13 A. And if that means cutting a sample or</p> <p>14 molding a sample or putting it into a package, I'm</p> <p>15 not going to include all of those people's names</p> <p>16 on the report.</p> <p>17 Q. Okay. Did the Trutek personnel cut the</p> <p>18 pigskin samples in your presence, or were they</p> <p>19 already pre-cut by the time they arrived at your</p> <p>20 laboratory?</p> <p>21 A. I don't remember. They may have cut</p> <p>22 them for me in this case before they arrived.</p> <p>23 Q. Okay. And did the Trutek personnel</p> <p>24 apply the test samples to the pigskin substrate in</p> <p>25 your laboratory?</p>
<p>70</p> <p>1 Q. And you also did not record in the</p> <p>2 report the fact that Trutek personnel performed</p> <p>3 some of the steps that are described in your</p> <p>4 report; correct?</p> <p>5 MR. KREMEN: Objection to the form of</p> <p>6 the question.</p> <p>7 You may answer.</p> <p>8 THE WITNESS: No, I did not record that</p> <p>9 in the report.</p> <p>10 BY MS. PETERSON:</p> <p>11 Q. Why not?</p> <p>12 A. The report was for them. It was their</p> <p>13 report.</p> <p>14 Q. Okay.</p> <p>15 A. They knew they were present.</p> <p>16 Q. Were you instructed by Trutek to not</p> <p>17 include that information?</p> <p>18 A. No.</p> <p>19 Q. So that was a decision all on your own</p> <p>20 that it would not be necessary to include the</p> <p>21 information because they knew they were there?</p> <p>22 A. It is not common to include in the</p> <p>23 report the names of all people present at a test.</p> <p>24 Q. Is it common to include in the report</p> <p>25 the names of people who actively participate and</p>	<p>72</p> <p>1 A. Yeah. Yeah, they applied the material</p> <p>2 to the substrate in the lab.</p> <p>3 Q. So if you have a customer who attends a</p> <p>4 test in your laboratory and they perform the</p> <p>5 sample preparation in front of you in your</p> <p>6 laboratory, would you commonly include that</p> <p>7 information in your report?</p> <p>8 A. No, not necessarily.</p> <p>9 Q. Are there circumstances where you would</p> <p>10 include that information?</p> <p>11 A. Yes.</p> <p>12 Q. And what circumstances would those be?</p> <p>13 A. If the customer feels as though that</p> <p>14 information will differentiate one result from</p> <p>15 another, sometimes that helps. For example, if we</p> <p>16 were testing, say, the triboelectric charging of,</p> <p>17 for example, a substance of some kind and one</p> <p>18 person, say, is stronger or faster than the other</p> <p>19 person in triboelectrically charging a material,</p> <p>20 you would want to record who the person was that</p> <p>21 was performing the charging.</p> <p>22 Q. Okay. And just to complete this out,</p> <p>23 did you provide -- or did you receive any</p> <p>24 instructions from Trutek in any manner with</p> <p>25 respect to whether this information about how the</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

19 (73 to 76)

October 25, 2022

<p>73</p> <p>1 samples were prepared should be included in your 2 report?</p> <p>3 A. Can you restate that question?</p> <p>4 Q. Did you receive any instructions from 5 Trutek in any manner about whether to include 6 information in the report about who handled the 7 sample preparation?</p> <p>8 A. No, I did not receive instructions from 9 Trutek regarding this.</p> <p>10 Q. Okay. So you weren't instructed by 11 Trutek to include it, and you weren't instructed 12 by Trutek to not include it; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. Now, you're aware that Trutek 15 hired another individual to conduct electrostatic 16 testing of the Trutek and Blue Willow products; 17 right?</p> <p>18 A. I am aware of that.</p> <p>19 Q. His name is Dr. Alexi Ermakov; right?</p> <p>20 A. Yes.</p> <p>21 Q. And did you review his report that he 22 prepared in this matter directed to the testing 23 that he conducted?</p> <p>24 A. I've seen the report.</p> <p>25 Q. When did you first see the report?</p>	<p>75</p> <p>1 represent to you that the first round of testing 2 was in July of 2019. That's around the time that 3 you did your first round of testing; correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And his second round of testing was 6 conducted in January of 2021. That's the same 7 time that you conducted your second round of 8 testing; right?</p> <p>9 A. Yes, I was unaware that he had performed 10 another round of testing at that time.</p> <p>11 Q. Okay. So you know about the first round 12 of testing, but you did not know that he performed 13 a second round of testing; is that --</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Thank you.</p> <p>16 Do you know Dr. Ermakov?</p> <p>17 A. No.</p> <p>18 Q. Have you ever heard of him before?</p> <p>19 A. I don't know.</p> <p>20 Q. Outside of the context of this matter?</p> <p>21 A. I don't know.</p> <p>22 Q. Okay.</p> <p>23 A. I've -- I meet with a lot of people who 24 are involved in electrostatic characterization. 25 So it would be difficult for me to recall whether</p>
<p>74</p> <p>1 A. It was either after the first test or at 2 the time of the first test.</p> <p>3 Q. Okay. So you saw it before you 4 conducted your second round of testing; right?</p> <p>5 A. I definitely saw it before I saw the -- 6 before I performed the second round of testing, 7 yes.</p> <p>8 Q. And are you aware that Dr. Ermakov, just 9 like you did, he also performed two rounds of 10 testing on the same products?</p> <p>11 A. Yes. I believe he performed -- I only 12 have the one report, though. I didn't see two 13 reports, but I believe he did test multiple 14 substances --</p> <p>15 Q. Okay.</p> <p>16 A. -- in his test.</p> <p>17 Q. Do you know -- the report that you saw 18 from Mr. Ermakov, would it have been a report that 19 was prepared -- actually, I assume it was a report 20 prepared around the time that you did your first 21 round of testing; right?</p> <p>22 A. I don't know the exact date that 23 Dr. Ermakov performed his testing, I'm sorry.</p> <p>24 Q. Okay. Well, I can represent to you -- I 25 can show you the reports, as well, but I can</p>	<p>76</p> <p>1 or not I've met him.</p> <p>2 Q. Okay. But you don't have any specific 3 recollection of having met him?</p> <p>4 A. No, I don't believe so.</p> <p>5 Q. Did you ever speak with Dr. Ermakov 6 about the testing that he conducted or that you 7 conducted on behalf of Trutek?</p> <p>8 A. I've never spoken to Dr. Ermakov, as far 9 as I recall.</p> <p>10 Q. Okay. And you understand that 11 Dr. Ermakov -- he used a different method to test 12 the surface electrostatic charge of the products; 13 correct?</p> <p>14 A. I'm aware of that.</p> <p>15 Q. He used different equipment?</p> <p>16 A. Correct.</p> <p>17 Q. And he used a different substrate to 18 test the materials?</p> <p>19 A. Correct.</p> <p>20 MR. KREMEN: Objection to the form of 21 the question.</p> <p>22 BY MS. PETERSON:</p> <p>23 Q. And what is your assessment of 24 Dr. Ermakov's testing?</p> <p>25 A. I will not make an assessment of</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

20 (77 to 80)

October 25, 2022

<p>77</p> <p>1 Dr. Ermakov's testing.</p> <p>2 Q. Why not?</p> <p>3 A. I'm not familiar with his equipment. I</p> <p>4 haven't tested it myself. I haven't tried that</p> <p>5 experiment myself. I am not familiar with his</p> <p>6 history with this particular methodology. And I'm</p> <p>7 not, I believe, adequately educated on his</p> <p>8 particular line of reasoning about this to make</p> <p>9 comment on it.</p> <p>10 Q. That's all fair. Thank you for that.</p> <p>11 When you say that you're not adequately</p> <p>12 educated on his particular line of reasoning, is</p> <p>13 there some aspect of his testing method that</p> <p>14 you're thinking about?</p> <p>15 A. I'm not familiar --</p> <p>16 MR. KREMEN: You're calling for</p> <p>17 speculation on something that he said that he's</p> <p>18 not qualified to answer. If you can --</p> <p>19 MS. PETERSON: He's pointed to an aspect</p> <p>20 of Dr. Ermakov's testing methodology that he's not</p> <p>21 adequately educated about. I'm just asking him</p> <p>22 what aspect of the testing methodology he's</p> <p>23 speaking about.</p> <p>24 THE WITNESS: I've not reviewed the</p> <p>25 construction of the machine that he used.</p>	<p>79</p> <p>1 to make it dissipative will often use an</p> <p>2 insulative glass substrate.</p> <p>3 Q. Okay. And so printer paper would fall</p> <p>4 in that category?</p> <p>5 A. Yes, it's an insulator. It does not</p> <p>6 conduct electricity by itself.</p> <p>7 Q. Okay. So if printer paper is an</p> <p>8 insulator and doesn't conduct electricity by</p> <p>9 itself, would you expect to see an electrostatic</p> <p>10 surface charge measured on just a plain piece of</p> <p>11 printer paper?</p> <p>12 A. You could, but that's why people</p> <p>13 generally neutralize it first, just like we did</p> <p>14 with the pigskin, remember.</p> <p>15 Q. Okay. And have you ever used printer</p> <p>16 paper as a substrate for measuring surface</p> <p>17 electrostatic charge of a composition, a liquid?</p> <p>18 A. I've used cellulose, which is</p> <p>19 effectively a similar material.</p> <p>20 Q. But you haven't used printer paper for</p> <p>21 this type of testing?</p> <p>22 A. Not personally, no.</p> <p>23 Q. Okay.</p> <p>24 MS. PETERSON: We can take that document</p> <p>25 down for now. We'll be referring to it later</p>
<p>78</p> <p>1 BY MS. PETERSON:</p> <p>2 Q. Okay.</p> <p>3 A. I'm not familiar with the equipment that</p> <p>4 he's using.</p> <p>5 Q. And what about the choice of using paper</p> <p>6 as a substrate, are you familiar with using</p> <p>7 printer paper as a substrate on which to measure</p> <p>8 the surface electrostatic charge of a product?</p> <p>9 A. People use insulative materials</p> <p>10 frequently to measure charge of other items</p> <p>11 because insulators are not going to -- of</p> <p>12 themselves, unless they're triboelectrically</p> <p>13 charged, are not going to conduct electricity or</p> <p>14 allow electrons to flow across the surface of the</p> <p>15 material. So that's not uncommon. It does occur.</p> <p>16 It's not -- well, it is used. So there are</p> <p>17 examples of this, of people doing this.</p> <p>18 Q. Okay. And just some terminology, I</p> <p>19 apologize, this is not my particular area of</p> <p>20 expertise like it is for you, but you referred</p> <p>21 using insulative material?</p> <p>22 A. Right. So things like paper, wood pulp,</p> <p>23 other compounds, glass is an insulator unless it's</p> <p>24 treated. And so some people who are developing</p> <p>25 treatments for glass to make it more conductive or</p>	<p>80</p> <p>1 because I have some more specific questions. But</p> <p>2 for now let's -- I'd like to mark just for the</p> <p>3 record a copy of the deposition notice. We'll</p> <p>4 mark this as Exhibit 24.</p> <p>5 (Burns Deposition Exhibit 24 was marked</p> <p>6 for identification and attached to the</p> <p>7 transcript.)</p> <p>8 THE REMOTE TECHNICIAN: Counsel, would</p> <p>9 you like me to screen share that for you or just</p> <p>10 mark it?</p> <p>11 MS. PETERSON: Let's mark it and screen</p> <p>12 share it, please.</p> <p>13 THE REMOTE TECHNICIAN: Okay. Stand by,</p> <p>14 please.</p> <p>15 BY MS. PETERSON:</p> <p>16 Q. Dr. Burns --</p> <p>17 A. I'm not a doctor.</p> <p>18 Q. Mr. Burns, I'm sorry. I kept doing that</p> <p>19 yesterday, too.</p> <p>20 Mr. Burns, this is just a court document</p> <p>21 indicating that BlueWillow noticed your deposition</p> <p>22 to take place today. Have you seen this document</p> <p>23 before?</p> <p>24 A. Yes, I believe that this was among the</p> <p>25 exhibits that you and the other attorney had</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

21 (81 to 84)

October 25, 2022

<p style="text-align: right;">81</p> <p>1 agreed upon. And this was submitted to everybody 2 involved, I think. 3 Q. Okay. And you understand that you are 4 attending here, the deposition today, pursuant to 5 this deposition notice? 6 A. Yes. 7 Q. Okay. Thank you. 8 MS. PETERSON: We can take that down. 9 BY MS. PETERSON: 10 Q. Mr. Burns, what did you do to prepare 11 for your deposition today? 12 A. I had to retype effectively a résumé, a 13 list of my qualifications. And so I created that. 14 And I printed out and reviewed some of the test 15 reports. I reread them. 16 Q. Those would be your two test reports? 17 A. Correct. 18 Q. Did you review any other test reports? 19 A. I believe there was a couple of 20 documents that were provided to me as part of 21 these exhibits. There was the one by 22 Dr. Ermakov -- or contained the report of 23 Dr. Ermakov, there's some information from a 24 Dr. Lemmo, and there was some information from a 25 Dr. Amiji.</p>	<p style="text-align: right;">83</p> <p>1 Anything else? 2 A. I don't believe I can remember anything 3 else. But I think there were a total of 11 4 documents that were provided to me. Several of 5 them were simply notices of-- that I'd be 6 depose -- like there was one that says I would be 7 deposed and so on. 8 Q. Okay. Did you review any scientific 9 articles or publications? 10 A. No. 11 Q. Okay. And did you meet with anyone to 12 prepare for the deposition today? And that could 13 be a meeting in person or by video or by 14 telephone. 15 A. Well, obviously I met with Stanley 16 Kremen, who spoke with me about this. 17 Q. When was that meeting? 18 A. I'll bring it up on my calendar. It was 19 last week. I believe it was Monday. 20 Q. And do you recall how long you spoke to 21 him, approximately? 22 A. It was Monday. And it was, I don't 23 know, a few hours. 24 Q. So apart from the discussion with 25 Mr. Kremen last Monday for a few hours, did you</p>
<p style="text-align: right;">82</p> <p>1 Q. And did you review all of those 2 documents? 3 A. I read them as best I could, yes. 4 Q. Okay. And with respect to Dr. Ermakov, 5 you said you only received one report? 6 A. Well, I have the same reports that 7 everybody else had in the exhibits that you 8 provided. 9 Q. I didn't provide you with anything. So 10 I don't know what it is that had you were given. 11 A. Yeah, I believe I have one report from 12 Dr. Ermakov. 13 Q. Okay. And it's the 2019 report? 14 A. Let me look, I don't know if a date is 15 on it. Yeah, I think it's 2019. 16 Q. I think the date is all the way down at 17 the bottom. 18 A. Yeah, there it is. 19 Q. Okay. Apart from your two reports and 20 the Ermakov, Lemmo, and Amiji reports, did you 21 review any other documents to prepare for your 22 deposition today? 23 A. There was a résumé of sorts or a list of 24 qualifications from Dr. Amiji. It was quite long. 25 Q. It is.</p>	<p style="text-align: right;">84</p> <p>1 meet with or speak to anybody else as you were 2 preparing for today's deposition? 3 A. I had a couple of phone calls with 4 Mr. Kremen. There was some uncertainty as to 5 whether the deposition would be today or if it 6 would be later on. 7 Q. Okay. 8 A. And there was a request that I change 9 the format of my résumé because numbered 10 formatting was better for him. 11 Q. Okay. Did you meet with or have any 12 conversations with any Trutek personnel? 13 A. I did speak with Mr. Wahi briefly. 14 Q. And when was that conversation? 15 A. The other night, last night. 16 Q. Last night? 17 A. Uh-huh. 18 Q. And what did you discuss with Mr. Wahi? 19 A. I would be coming in and I would be 20 deposed today and that I was ready to be deposed. 21 Q. What else? What else did you talk 22 about? 23 A. There had been a deposition yesterday. 24 Q. Did you review the transcript of that 25 deposition?</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

22 (85 to 88)

October 25, 2022

<p>85</p> <p>1 A. No.</p> <p>2 Q. And what did Mr. Wahi tell you about</p> <p>3 yesterday's deposition?</p> <p>4 A. Nothing, really. I believe Dr. Lemmo</p> <p>5 had been deposed.</p> <p>6 Q. That's correct.</p> <p>7 Did Mr. Wahi discuss the substance of</p> <p>8 Dr. Lemmo's deposition testimony with you in any</p> <p>9 way?</p> <p>10 A. I have no idea what Dr. Lemmo said.</p> <p>11 Q. Okay. So he didn't -- did Mr. Wahi talk</p> <p>12 to you about the types of questions that I asked</p> <p>13 Dr. Lemmo yesterday?</p> <p>14 A. I don't believe he mentioned anything</p> <p>15 specific, no.</p> <p>16 Q. And this conversation was last night;</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. So you feel fairly certain that you can</p> <p>20 recall the conversation?</p> <p>21 A. Yes, he didn't mention any specific</p> <p>22 questions, I don't believe.</p> <p>23 Q. Did he mention anything general about</p> <p>24 the questions that were discussed at the</p> <p>25 deposition?</p>	<p>87</p> <p>1 and Mr. Wahi were on the phone. So...</p> <p>2 Q. Okay. And it was just that one call?</p> <p>3 A. I believe so, yeah.</p> <p>4 Q. And was there anybody else present for</p> <p>5 that phone call besides Mr. Kremen and Mr. Wahi?</p> <p>6 A. No, I was at home with my family. So we</p> <p>7 really didn't have time to talk to anybody at any</p> <p>8 length.</p> <p>9 Q. Okay. Did Mr. Wahi or Mr. Kremen ask</p> <p>10 you to do anything else before your deposition</p> <p>11 started today to prepare?</p> <p>12 A. They told me to look over the documents</p> <p>13 provided, but that was it. Why, do I seem</p> <p>14 prepared?</p> <p>15 Q. You do seem prepared, but it also, you</p> <p>16 know, seems like you're really struggling to come</p> <p>17 up with an answer to these questions. So I'm just</p> <p>18 trying to explore, you know, what it is that was</p> <p>19 discussed.</p> <p>20 A. No, I'm answering as best as I can.</p> <p>21 Most of the things I have to say pertain to what's</p> <p>22 been written down. The whole point of writing it</p> <p>23 down is so I wouldn't have to remember it. That's</p> <p>24 why I write reports.</p> <p>25 Q. Yeah.</p>
<p>86</p> <p>1 A. I don't believe he mentioned anything,</p> <p>2 no.</p> <p>3 Q. Did he provide any advice to you or any</p> <p>4 guidance as to how to prepare for the deposition</p> <p>5 or how to answer questions today?</p> <p>6 MR. KREMEN: Objection.</p> <p>7 You may answer.</p> <p>8 THE WITNESS: Just be truthful and, you</p> <p>9 know, answer truthfully. That's just as a matter</p> <p>10 of course.</p> <p>11 BY MS. PETERSON:</p> <p>12 Q. Did he say anything else?</p> <p>13 A. I don't remember him mentioning anything</p> <p>14 that I wasn't already aware of. You would be</p> <p>15 asking me questions. And it went for a long time</p> <p>16 yesterday, I guess. So...</p> <p>17 Q. How long was your conversation with</p> <p>18 Mr. Wahi last night?</p> <p>19 A. I don't know, two minutes.</p> <p>20 Q. So it was really short?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. And did you have any other</p> <p>23 conversations with Trutek's lawyers or any Trutek</p> <p>24 personnel yesterday?</p> <p>25 A. It was a conference call. Mr. Kremen</p>	<p>88</p> <p>1 A. There's something, like, a 100 or so</p> <p>2 customers that I deal with every year that I</p> <p>3 perform testing for.</p> <p>4 Q. Sure. Yeah.</p> <p>5 A. So, you know, that's the whole point of</p> <p>6 the report, so I don't have to off the top of my</p> <p>7 head remember a particular test.</p> <p>8 Q. Yeah. No, I can tell from your résumé</p> <p>9 you've certainly done a lot of this. So I</p> <p>10 understand the need to have it documented so that</p> <p>11 you can recall, absolutely.</p> <p>12 So you said that most of the things that</p> <p>13 you have to say pertain to what's been written</p> <p>14 down. You mean most of the things that you had to</p> <p>15 say during the deposition today?</p> <p>16 A. Well, regarding this particular test.</p> <p>17 Q. Okay.</p> <p>18 MS. PETERSON: Okay. Let's go ahead and</p> <p>19 mark a copy of that résumé. We'll mark that as</p> <p>20 Exhibit 25.</p> <p>21 (Burns Deposition Exhibit 25 was marked</p> <p>22 for identification and attached to the</p> <p>23 transcript.)</p> <p>24 THE REMOTE TECHNICIAN: Okay. Stand by</p> <p>25 please.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

23 (89 to 92)

October 25, 2022

<p>89</p> <p>1 BY MS. PETERSON:</p> <p>2 Q. Mr. Burns, do you recognize Exhibit 25</p> <p>3 as a copy of the résumé that you just updated?</p> <p>4 A. Yeah, I have it.</p> <p>5 Q. Okay. And do you have any other changes</p> <p>6 or updates to make to this résumé?</p> <p>7 A. I don't think so, no.</p> <p>8 Q. And how would you describe your current</p> <p>9 occupation?</p> <p>10 A. My title is test lab manager.</p> <p>11 Q. And what would you consider to be your</p> <p>12 field of expertise?</p> <p>13 A. Mostly electrostatic characterization</p> <p>14 testing, calibration of equipment, and things</p> <p>15 having to do with electrostatics, electronics, and</p> <p>16 resistance voltage, triboelectric charge, things</p> <p>17 like that.</p> <p>18 Q. Okay. Thank you.</p> <p>19 Have you ever had a patent applied for</p> <p>20 in your name?</p> <p>21 A. I don't think so, no.</p> <p>22 Q. And do you recall if you've ever had any</p> <p>23 papers or presentations or posters published?</p> <p>24 A. Nothing worth bragging about.</p> <p>25 Q. Okay. I didn't mean to imply there</p>	<p>91</p> <p>1 acceptance criteria for assemblies, electronic</p> <p>2 assemblies.</p> <p>3 Q. Okay.</p> <p>4 A. So printed circuit boards, wiring, you</p> <p>5 know, things like that. Along with that came some</p> <p>6 handling and expertise on what electrostatic</p> <p>7 phenomena was. It was very nice to get that kind</p> <p>8 of training.</p> <p>9 Q. Okay. And then it looks like you've got</p> <p>10 a section on industry standards committees. So</p> <p>11 you're a member of that particular committee, and</p> <p>12 you have been since 2019?</p> <p>13 A. Yeah, Working Group 11. I would sit in</p> <p>14 and listen before that, but I don't believe I was</p> <p>15 a member until that point. Because the rules of</p> <p>16 the ESDA are that you have to attend, I believe,</p> <p>17 at least one meeting in person, and at the time I</p> <p>18 was pretty distant from them. So I was only able</p> <p>19 to attend virtually most of the time.</p> <p>20 Q. Okay. And what is Working Group 11?</p> <p>21 A. So this is the working group that</p> <p>22 oversees -- they're called the packaging</p> <p>23 committee, but they actually oversee the standards</p> <p>24 that tell you certain types of test methods. Any</p> <p>25 test method in their group that starts with 11,</p>
<p>90</p> <p>1 shouldn't be anything. There's just some things</p> <p>2 that I need to check off my list.</p> <p>3 And I see that you have a bachelor's</p> <p>4 degree in history that you received in 2006;</p> <p>5 right?</p> <p>6 A. Yeah.</p> <p>7 Q. And it looks like you have an Associate</p> <p>8 of Applied Science degree in engineering</p> <p>9 technology that you received in 2014; right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Under "Certifications," where it</p> <p>12 refers to ESD Program Manager certification,</p> <p>13 that's what you were explaining earlier before</p> <p>14 about electrostatic discharge?</p> <p>15 A. That's one way that I have some training</p> <p>16 in this.</p> <p>17 Q. No, I just meant the ESD. That stands</p> <p>18 for electrostatic discharge?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. At the bottom of the</p> <p>21 certification list, there's a reference to an</p> <p>22 IPC 610 Certified IPC Specialist. What is that?</p> <p>23 A. So when I first got involved in the</p> <p>24 electronics industry, this was a training that was</p> <p>25 available where they would train you on proper</p>	<p>92</p> <p>1 most of it having to do with resistance, static</p> <p>2 shielding and triboelectric charge. And so they</p> <p>3 oversee the test standards and documentation</p> <p>4 regarding those test methods.</p> <p>5 Q. Okay. And it looks like you've been</p> <p>6 with Electro-Tech Systems since September 2016.</p> <p>7 So that's a little over six years; right?</p> <p>8 A. Yeah, I don't know why I put four years.</p> <p>9 I apologize for that.</p> <p>10 Q. That's okay.</p> <p>11 And this is your current job title, test</p> <p>12 laboratory manager?</p> <p>13 A. Yes.</p> <p>14 Q. And you've had that position since 2020;</p> <p>15 right?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. If we look down at item No. 7 at</p> <p>18 the bottom of the page, I see you have listed here</p> <p>19 that you performed hands-on standard and custom</p> <p>20 testing -- and this is since 2000- -- and then I</p> <p>21 guess since 2016, that would be your time as lead</p> <p>22 test technician; is that right?</p> <p>23 A. Correct.</p> <p>24 Q. And so this is what you were referring</p> <p>25 to earlier about having different categories of</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

24 (93 to 96)

October 25, 2022

<p style="text-align: right;">93</p> <p>1 testing within the company, either standard or</p> <p>2 custom?</p> <p>3 A. Yeah. Yeah, that's correct.</p> <p>4 Q. So can you -- what's the difference</p> <p>5 between the standard and the custom testing</p> <p>6 services that ETS provides?</p> <p>7 A. Standard testing is testing which one</p> <p>8 that there is already an industry standard</p> <p>9 document for; right? And there's customization to</p> <p>10 it. You're literally following the document</p> <p>11 verbatim.</p> <p>12 Custom testing is usually testing in</p> <p>13 which the customer has some requirements where</p> <p>14 there's an unusual element to it that does not fit</p> <p>15 within common industry test standards. And so</p> <p>16 what you try to do is you try to make it fit as</p> <p>17 best you can, but noting anything that, say, is</p> <p>18 not something that was documented in the standard.</p> <p>19 Q. Okay. So for custom -- and I think you</p> <p>20 confirmed earlier that the testing that you did</p> <p>21 for Trutek was custom testing; right?</p> <p>22 A. That's correct.</p> <p>23 Q. And are there any common -- actually,</p> <p>24 just are there any industry test standards that</p> <p>25 you followed when conducting the Trutek testing?</p>	<p style="text-align: right;">95</p> <p>1 A. Well, it's difficult because the</p> <p>2 industry standards are mostly dealing with taking</p> <p>3 a solid object and charging it in some way, often</p> <p>4 by rolling it down an incline plane or by rubbing</p> <p>5 it on something to measure the electrostatic</p> <p>6 charge. And a lot of documentation on how to</p> <p>7 measure a charge on the material is still being</p> <p>8 developed.</p> <p>9 Q. Okay. So can you identify -- I mean,</p> <p>10 let me rephrase that.</p> <p>11 Are there any elements of the testing</p> <p>12 that you conducted for Trutek that do fit with an</p> <p>13 industry standard?</p> <p>14 A. Yes. So the use of a Faraday cup and a</p> <p>15 NanoCoulomb Meter is a pretty standard piece of</p> <p>16 equipment that people use.</p> <p>17 Q. Okay.</p> <p>18 A. That's common.</p> <p>19 Q. Okay.</p> <p>20 A. And the use of the ionizer, that's</p> <p>21 typical when you're performing this kind of</p> <p>22 testing.</p> <p>23 Q. Okay. When you say that the ionizer is</p> <p>24 typical, are you talking about the particular</p> <p>25 equipment that you used that's a standard piece of</p>
<p style="text-align: right;">94</p> <p>1 A. We were trying to imitate as much as we</p> <p>2 could common industry standards or common industry</p> <p>3 practices for measuring electrostatic charge on an</p> <p>4 object. However, most of these test standards</p> <p>5 weren't really written with a gel or a liquid in</p> <p>6 mind necessarily.</p> <p>7 Q. Okay. And are there any common industry</p> <p>8 test standards for measuring electrostatic charge</p> <p>9 on pigskin?</p> <p>10 A. At this time, none have been written</p> <p>11 yet.</p> <p>12 Q. So there were at least two aspects to</p> <p>13 the testing that were custom in the sense that</p> <p>14 you're using it, the testing of liquids for</p> <p>15 electrostatic surface charge and the testing on</p> <p>16 pigskin as the substrate; is that right?</p> <p>17 A. Correct. At least I'm not aware of any.</p> <p>18 Q. Okay. And are there any other elements</p> <p>19 or aspects to the testing that you performed for</p> <p>20 Trutek that did not precisely match up with an</p> <p>21 industry standard?</p> <p>22 A. Can you rephrase that question?</p> <p>23 Q. Okay. So we identified two aspects to</p> <p>24 the testing that don't match up with an industry</p> <p>25 standard. Are there any others?</p>	<p style="text-align: right;">96</p> <p>1 equipment?</p> <p>2 A. The ionizer was used to neutralize the</p> <p>3 pigskin in this case. I believe I mentioned that</p> <p>4 earlier. So it's an air ionizer, and it's blowing</p> <p>5 air so that there's movement of ions that it's</p> <p>6 emitting. And it's emitting an equal amount of</p> <p>7 positive and negative ions so that if there's a</p> <p>8 positive charge on a material, it attracts the</p> <p>9 negative ions. If there's a negative charge on</p> <p>10 the material, it attracts the positive ions and</p> <p>11 thus neutralizes any charge that may preexist on a</p> <p>12 material. And this would enable us to measure</p> <p>13 just the substance we were applying, not the</p> <p>14 substrate.</p> <p>15 Q. Okay. And so you had said earlier that</p> <p>16 the use of the ionizer, that's typical when you're</p> <p>17 performing this kind of testing?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. So, basically, using an ionizer</p> <p>20 on the substrate --</p> <p>21 A. To neutralize --</p> <p>22 Q. -- before you applied the test material</p> <p>23 to the substrate, that's in your view a pretty</p> <p>24 typical standard approach?</p> <p>25 A. Yes. So you're neutralizing any</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

25 (97 to 100)

October 25, 2022

<p style="text-align: right;">97</p> <p>1 preexisting charge on any object to which you're</p> <p>2 applying a substance or a charge.</p> <p>3 Q. Okay. Are you aware of any formal</p> <p>4 written standards describing that?</p> <p>5 A. Yes. Uh-huh.</p> <p>6 Q. What are they?</p> <p>7 A. So if you looked up, you could see that</p> <p>8 one of the standards that I referenced was</p> <p>9 ANSI/ESD ADV11.2. And that's a document that was</p> <p>10 written in 1995, and it was written by the ESD</p> <p>11 association. And what they were attempting to do</p> <p>12 at the time was create a document that contained a</p> <p>13 set of test methods for recording charge on</p> <p>14 objects.</p> <p>15 Q. Okay. And this particular standard test</p> <p>16 method also describes the ionization process that</p> <p>17 you referred to?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. It mentions an ionizer.</p> <p>21 Q. Does this test method address the use of</p> <p>22 pigskin as a substrate?</p> <p>23 A. No.</p> <p>24 Q. What does it say about the substrate?</p> <p>25 A. So there are actually several different</p>	<p style="text-align: right;">99</p> <p>1 I see that you identify liquids; right?</p> <p>2 A. I have performed tests on liquids, yeah.</p> <p>3 Q. Okay. Have you performed tests on</p> <p>4 liquids to measure the -- to measure its</p> <p>5 electrostatic charge before?</p> <p>6 A. Not in this way.</p> <p>7 Q. When you say "not in this way," what way</p> <p>8 are you talking about?</p> <p>9 A. I don't remember doing it -- doing --</p> <p>10 measuring charge, specifically. Voltage and other</p> <p>11 things, but that was -- those were other</p> <p>12 applications. This was -- those applications</p> <p>13 would not have applied here.</p> <p>14 Q. Okay. And then before you were employed</p> <p>15 at ETS, it looks like you worked for several years</p> <p>16 at EFE Laboratories; right?</p> <p>17 A. Yes.</p> <p>18 Q. And it looks like you were involved in</p> <p>19 production work there, is that generally correct?</p> <p>20 A. I started in production work there. I</p> <p>21 didn't stay in production work there the entire</p> <p>22 time, but yes, I was involved --</p> <p>23 Q. Okay.</p> <p>24 A. -- in production there for a while.</p> <p>25 Q. Okay. Yeah.</p>
<p style="text-align: right;">98</p> <p>1 test methods listed in that document. And some of</p> <p>2 the substrates are insulators, such as silica --</p> <p>3 glass -- glass and -- sorry, glass and Teflon is</p> <p>4 another one mentioned.</p> <p>5 Q. Okay. But it doesn't address the use of</p> <p>6 pigskin?</p> <p>7 A. No.</p> <p>8 Q. Does it address the use of any</p> <p>9 alternative skin models?</p> <p>10 A. No.</p> <p>11 Q. So, like, no other animal skin; right?</p> <p>12 A. No.</p> <p>13 Q. Or human cadaver skin?</p> <p>14 A. No.</p> <p>15 Q. Have you ever performed a test using</p> <p>16 human cadaver skin as the substrate?</p> <p>17 MR. KREMEN: Yuck.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MS. PETERSON:</p> <p>20 Q. Okay. Still looking at Exhibit 25 and</p> <p>21 Item 7 of your résumé, if we could scroll -- well,</p> <p>22 actually, in Item 7D it says that you've tested a</p> <p>23 wide variety of materials for material and product</p> <p>24 qualification.</p> <p>25 And then partway down through that list,</p>	<p style="text-align: right;">100</p> <p>1 So on your résumé, it looks like you</p> <p>2 also -- yeah, I know there's a lot of other stuff</p> <p>3 listed there, but it doesn't look like you were</p> <p>4 performing any type of testing or consulting</p> <p>5 services while at EFE Laboratories; right?</p> <p>6 A. No, I didn't really do any testing or</p> <p>7 consulting while I was -- well, not as relates to</p> <p>8 this particular topic.</p> <p>9 Q. Okay.</p> <p>10 A. I did do some what could be called</p> <p>11 consulting, but it didn't have to do with</p> <p>12 electrostatic decay or a charge or anything like</p> <p>13 that.</p> <p>14 Q. Okay.</p> <p>15 MS. PETERSON: I'm at another good</p> <p>16 breaking point right now. How about we go off the</p> <p>17 record.</p> <p>18 THE VIDEOGRAPHER: We're going off the</p> <p>19 record. The time is now 12:44 p.m.</p> <p>20 (Recess from the record.)</p> <p>21 THE VIDEOGRAPHER: We're back on the</p> <p>22 record. The time is now 1:32 p.m.</p> <p>23 MS. PETERSON: Just one housekeeping</p> <p>24 matter, Matthew, if we could make sure that the</p> <p>25 transcript also indicates that Mr. Wahi is present</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

26 (101 to 104)

October 25, 2022

<p>101</p> <p>1 for the deposition, I would appreciate that, 2 because I don't think he was introduced earlier. 3 Okay. And then, Jennifer, I dropped 4 into the folder a new exhibit over lunch. I was 5 wondering if we could pull that up and mark it as 6 Exhibit 26. 7 (Burns Deposition Exhibit 26 was marked 8 for identification and attached to the 9 transcript.) 10 THE REMOTE TECHNICIAN: Sure. Is that 11 in the repository, the link that Planet Depos -- 12 MS. PETERSON: Yeah, I used the link to 13 upload it. The file name says NasalGuard. 14 THE REMOTE TECHNICIAN: Okay. Just give 15 me a minute or two to download it. Do you want it 16 marked and presented right now? 17 MS. PETERSON: Yeah. 18 THE REMOTE TECHNICIAN: Okay. Okay. 19 Yeah, just give me a minute. I need to go to the 20 link and download it from the repository. 21 MS. PETERSON: Okay. 22 THE REMOTE TECHNICIAN: Thank you. 23 MR. KREMEN: And what is that exhibit? 24 MS. PETERSON: We'll be displaying it, 25 Stan, once she has it.</p>	<p>103</p> <p>1 ETS over the last six years approximately has been 2 devoted to measuring the surface electrostatic 3 charge of products? 4 A. A lot of it. Measuring the charge of 5 products? 6 Q. Well, measuring the surface 7 electrostatic charge. 8 A. Yeah, I don't know the exact number of 9 hours. Are you looking for a number of hours or 10 how many years? I was performing testing on 11 objects for a charge using a NanoCoulomb Meter and 12 Faraday cup from 2017 onward. 13 Q. Okay. I mean, and I guess looking back 14 at your résumé -- which I don't appear to have up 15 anymore. 16 A. They can put it up on the screen like we 17 had it on the screen before. 18 THE REMOTE TECHNICIAN: Yeah, Counsel, 19 I'm ready for you whenever. 20 MS. PETERSON: Okay. We'll come back to 21 that then. So, yeah, let's pull up this new 22 exhibit. 23 BY MS. PETERSON: 24 Q. Okay. So we've marked as Exhibit 26 an 25 image -- or a picture of one of the NasalGuard</p>
<p>102</p> <p>1 I guess in the meantime, Jennifer, while 2 you're doing that, I can go forward with some 3 other questions so we're not wasting everyone's 4 time. 5 THE REMOTE TECHNICIAN: Okay. 6 BY MS. PETERSON: 7 Q. Mr. Burns, do you have any experience in 8 testing oil-in-water nanoemulsions? 9 A. Not that I know of. 10 Q. And that would also -- 11 A. The customers don't typically tell me -- 12 well, sometimes they tell me, but they don't 13 always tell me what the materials are made of -- 14 Q. Okay. 15 A. -- that I'm testing. 16 Q. So you're not aware of having ever 17 tested an oil-in-water nanoemulsion. 18 A. No one has informed me that I was 19 testing that. 20 Q. Okay. And so I would assume that also 21 means you're not aware of ever having tested an 22 oil-in-water nanoemulsion for electrostatic charge 23 either; right? 24 A. No. 25 Q. Okay. What percentage of your work at</p>	<p>104</p> <p>1 products. 2 Do you see that, Mr. Burns? 3 A. Yeah, I see it. 4 Q. And you see that there's -- there 5 appears to be a box, the packaging, plus a 6 container containing this fine mist nasal spray; 7 right? 8 A. I see that, yes. 9 Q. So for the products that you tested in 10 your first round of testing, did the samples come 11 to you in packaging like this? 12 A. No. 13 Q. Okay. So they weren't contained within, 14 like, the retail box? 15 A. If this is what the retail box is, no, I 16 didn't get it in the retail box. 17 Q. Okay. And then the mist container 18 that's sitting there to the right, did you receive 19 the samples that you tested in this retail 20 container? 21 A. There was a white bottle. I don't 22 remember it having that nozzle on it, and I don't 23 recall it having a label like this. 24 Q. Okay. And did you receive the products 25 in this form of packaging or in this container for</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

27 (105 to 108)

October 25, 2022

<p>105</p> <p>1 the second round of testing that you did?</p> <p>2 A. No.</p> <p>3 MS. PETERSON: Okay. And let's scroll</p> <p>4 down to the next -- this document actually has two</p> <p>5 pages.</p> <p>6 BY MS. PETERSON:</p> <p>7 Q. So this is another -- an image of</p> <p>8 another NasalGuard product, the Airborne Particle</p> <p>9 Blocker. And it looks like there's two types of</p> <p>10 packaging, but you could see there's a picture of</p> <p>11 the tube that the product comes in; right?</p> <p>12 A. Yeah, the tube looks a little familiar,</p> <p>13 but I don't recall having one that had a green cap</p> <p>14 like that or -- and I didn't really examine the</p> <p>15 writing on the package too closely at the time</p> <p>16 that we performed testing. So...</p> <p>17 Q. Okay. So you can't be sure whether it</p> <p>18 has this same logo and image --</p> <p>19 A. No.</p> <p>20 Q. -- and writing that's shown here on the</p> <p>21 retail packaging?</p> <p>22 A. No. And as I said, that was not</p> <p>23 relevant to the test that I performed. The</p> <p>24 packaging --</p> <p>25 Q. Yeah, I understand that you don't think</p>	<p>107</p> <p>1 Q. When you received the Blue Willow NanoBio</p> <p>2 Protect samples for testing, did it come in</p> <p>3 packaging like this?</p> <p>4 A. I don't remember this box, no. I'm</p> <p>5 pretty sure it wasn't in a -- is this a cardboard</p> <p>6 box we're looking at? Yeah.</p> <p>7 Q. Yeah.</p> <p>8 A. I don't think it came in a box like</p> <p>9 this -- or at least --</p> <p>10 Q. Okay.</p> <p>11 A. -- they didn't have the box with them at</p> <p>12 the time that they used it.</p> <p>13 Q. Okay.</p> <p>14 A. Is that fair?</p> <p>15 Q. Sure.</p> <p>16 And the -- whatever container you</p> <p>17 received for the NanoBio Protect product, did it</p> <p>18 contain that NanoBio Protect kind of logo in</p> <p>19 colors?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 MS. PETERSON: You can take that down.</p> <p>23 BY MS. PETERSON:</p> <p>24 Q. And then let's go back to your résumé,</p> <p>25 which has been marked as Exhibit 25. And let's</p>
<p>106</p> <p>1 it's relevant to the test that you performed. I'm</p> <p>2 just trying to get a better understanding of the</p> <p>3 samples that were provided to you.</p> <p>4 But they did not look exactly like this?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 MS. PETERSON: We could take that</p> <p>8 exhibit down.</p> <p>9 And then I'd like to pull up an exhibit</p> <p>10 that was marked yesterday during Dr. Lemmo's</p> <p>11 deposition. It would be Exhibit 13 --</p> <p>12 (Deposition Exhibit 13, Previously</p> <p>13 Marked.)</p> <p>14 MS. PETERSON: -- which for the record</p> <p>15 is Dr. Lemmo's opening report.</p> <p>16 THE REMOTE TECHNICIAN: Stand by,</p> <p>17 Counsel.</p> <p>18 MS. PETERSON: And if we go to page 8,</p> <p>19 which is page 11 of the PDF. And maybe zoom in on</p> <p>20 that picture at the bottom.</p> <p>21 BY MS. PETERSON:</p> <p>22 Q. Mr. Burns, this is a picture that was</p> <p>23 included in Dr. Lemmo's expert report of the</p> <p>24 packaging for NanoBio Protect. Okay?</p> <p>25 A. Okay.</p>	<p>108</p> <p>1 look at page 2. All the way down at the bottom</p> <p>2 under Item 7, I see that you have listed here that</p> <p>3 you've performed over 640 individual standard and</p> <p>4 custom tests.</p> <p>5 A. Yes.</p> <p>6 Q. Does that sound about right?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Okay. And just roughly speaking, what</p> <p>9 percentage of those tests involved measuring the</p> <p>10 surface electrostatic charge of a material?</p> <p>11 A. I don't know the percentage. I would</p> <p>12 have to look that up. But I do a few a year, say</p> <p>13 four, five a year that's charged instead of</p> <p>14 voltage or some other phenomena, electrostatic</p> <p>15 phenomena.</p> <p>16 Q. Okay. And out of those four or five a</p> <p>17 year, how many typically would involve testing the</p> <p>18 electro -- the surface electrostatic charge of a</p> <p>19 liquid?</p> <p>20 A. I don't think more than one or two,</p> <p>21 ever.</p> <p>22 Q. So one or two over the entire course of</p> <p>23 your six --</p> <p>24 A. Yes.</p> <p>25 Q. -- years at --</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 25, 2022

<p>109</p> <p>1 A. Correct.</p> <p>2 Q. -- at ETS?</p> <p>3 Okay. And does that include the tests</p> <p>4 that you ran for Trutek, or is that in addition to</p> <p>5 the tests that you ran for Trutek?</p> <p>6 A. Excluding the tests I ran for Trutek.</p> <p>7 Typically liquids are not tested this way, only</p> <p>8 rarely.</p> <p>9 Q. Okay. So -- well, you did two tests for</p> <p>10 Trutek. So does that mean that apart from --</p> <p>11 A. So if you include the two tests from</p> <p>12 Trutek, that would be something like four, a</p> <p>13 handful at most.</p> <p>14 Q. Oh, okay. That's what I was trying to</p> <p>15 understand. So there were the two tests for</p> <p>16 Trutek, and then apart from that, you've done it</p> <p>17 maybe one or two other times?</p> <p>18 A. Yeah, and I'm not going to name those</p> <p>19 customers, by the way. That's -- I'm not going to</p> <p>20 bring them up, but --</p> <p>21 Q. That's --</p> <p>22 A. As far as liquids -- the charge on</p> <p>23 liquids being measured, it's not common.</p> <p>24 Q. Yeah, that's fine. And I don't need to</p> <p>25 know the customer.</p>	<p>111</p> <p>1 I keep bringing this up, but your testimony is</p> <p>2 that you have never tested the electrostatic</p> <p>3 charge of a product on pigskin before; right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Would you expect that a product</p> <p>6 applied to human skin would exhibit the same</p> <p>7 surface electrostatic charge as when it's applied</p> <p>8 to pigskin?</p> <p>9 A. I don't know. I'd have to perform that</p> <p>10 test.</p> <p>11 Q. And I assume you were not asked to</p> <p>12 perform any test to establish that relationship.</p> <p>13 A. How do you propose to perform such a</p> <p>14 test? No, I did not perform any test on actual</p> <p>15 human flesh.</p> <p>16 Q. Okay. That's not -- okay.</p> <p>17 So when you say that you can't answer</p> <p>18 the question because you would have to perform</p> <p>19 that test, you're saying you would have to</p> <p>20 actually test the product on human skin?</p> <p>21 A. You're asking me what kinds of tests --</p> <p>22 if it was similar -- if a test on the pigskin is</p> <p>23 similar to a test on human skin, I don't know. I</p> <p>24 don't know. I don't know the answer to that</p> <p>25 question. It might be identical. It might be the</p>
<p>110</p> <p>1 But in those one or two other instances,</p> <p>2 was it a standard test or a custom test that you</p> <p>3 performed?</p> <p>4 A. It was custom. Yeah, it would be</p> <p>5 custom.</p> <p>6 Q. Okay. And would you say that the test</p> <p>7 method that you performed in those one or two</p> <p>8 other instances, was it consistent with the</p> <p>9 testing that you conducted for Trutek?</p> <p>10 A. No.</p> <p>11 Q. How was it different?</p> <p>12 A. Well, as you've indicated or what you're</p> <p>13 really asking is: Did I use pigskin in those?</p> <p>14 No, I did not use pigskin in any other test.</p> <p>15 Q. Actually, that wasn't even what I was</p> <p>16 getting at.</p> <p>17 A. Oh --</p> <p>18 Q. I was wondering about the other aspects</p> <p>19 of the testing procedure. Like the number of</p> <p>20 samples that were tested or the number of</p> <p>21 replicates or the equipment that you used, was</p> <p>22 that all generally consistent?</p> <p>23 A. That varies from one customer to the</p> <p>24 next.</p> <p>25 Q. Okay. And just to confirm, I apologize</p>	<p>112</p> <p>1 same. I don't know. I have not performed that</p> <p>2 test.</p> <p>3 Q. Okay.</p> <p>4 A. You're asking me to talk about something</p> <p>5 I don't know anything about.</p> <p>6 Q. That's a fair answer. If you don't</p> <p>7 know, you don't know. That's quite all right. We</p> <p>8 can move on. Don't worry about it.</p> <p>9 So before you conducted the testing for</p> <p>10 Trutek, did anybody else test the technique that</p> <p>11 you were planning to use for accuracy?</p> <p>12 A. The identical technique or -- a</p> <p>13 similar -- the same equipment has been used on</p> <p>14 other tests before, yes. A lot of people have</p> <p>15 performed tests using a NanoCoulomb Meter and</p> <p>16 Faraday cup.</p> <p>17 Q. Okay. And did anybody test, you know,</p> <p>18 the technique that you used involving pigskin?</p> <p>19 A. I am unaware of anyone testing pigskin</p> <p>20 of any kind at any time. I don't know.</p> <p>21 Q. Okay. And that would be true for people</p> <p>22 within ETS, as well as just generally outside the</p> <p>23 company?</p> <p>24 A. I don't know. I never asked the prior</p> <p>25 ownership whether they had ever tested pigskin.</p>

October 25, 2022

<p>113</p> <p>1 It's not something that occurred to me to ask 2 them.</p> <p>3 Q. Are you aware of whether anybody has 4 published on a technique for testing the 5 electrostatic charge of a liquid on pigskin?</p> <p>6 A. There are published techniques that talk 7 about testing electrostatic charge on an object. 8 It doesn't matter what the object is necessarily. 9 It's the same technique. You take the object and 10 you put it in the Faraday cup and it's connected 11 to a NanoCoulomb Meter and then you record the 12 reading.</p> <p>13 Q. Okay.</p> <p>14 A. It doesn't matter what the thing is that 15 you stick in the cup.</p> <p>16 Q. Okay. Well, apart from that, are you 17 aware of anybody publishing on a technique for 18 measuring electrostatic charge of a liquid 19 specifically on pigskin? Have you ever seen that 20 published anywhere?</p> <p>21 A. There are no techniques anywhere that 22 specify pigskin --</p> <p>23 Q. Okay.</p> <p>24 A. -- as far as I know.</p> <p>25 Q. Okay. And do you know if there are any</p>	<p>115</p> <p>1 that it was a patent, and I'm not an expert in 2 patents. So I can't even tell you what it is 3 trying to say.</p> <p>4 Q. Okay. Did Mr. Wahi ever explain 5 anything to you about the patent?</p> <p>6 A. I believe that he mentioned that he had 7 a patent on his NasalGuard product when he first 8 began working with me. So it did come up that he 9 had patented or was patenting products that he 10 makes --</p> <p>11 Q. Okay.</p> <p>12 A. -- and that they were among the 13 substances that I was going to be testing.</p> <p>14 Q. Okay. Did he provide you with any other 15 information about the subject matter of the 16 patent?</p> <p>17 A. No, and I don't believe he even -- had 18 not even provided me that document at that time.</p> <p>19 Q. Okay.</p> <p>20 A. So I don't even know if it was written 21 yet. I didn't look at the date on the document as 22 provided to me.</p> <p>23 Q. Sure.</p> <p>24 Did Mr. Kremen ever provide you with any 25 explanation of the subject matter of the patent?</p>
<p>114</p> <p>1 known error rates associated with measuring 2 electrostatic charge of a liquid on pigskin?</p> <p>3 A. No. Because if they had not published a 4 paper specifically on testing with pigskin, how 5 would they have published documentation on the 6 error rate.</p> <p>7 Q. So your answer is no, you're not aware 8 of anything?</p> <p>9 A. No, I'm not aware of any.</p> <p>10 Q. Okay. Mr. Burns, do you have any 11 understanding as to the fact that this litigation 12 involving Trutek involves a patent? Are you aware 13 of that?</p> <p>14 A. A patent, I believe, was one of the 15 documents that has been discussed.</p> <p>16 Q. Okay.</p> <p>17 A. Or was provided with the -- along with 18 the test report from Dr. Ermakov and the immensely 19 long résumé from Dr. Amiji. So, yes, it's one of 20 the many documents that I believe is involved. I 21 did not read the patent, sorry.</p> <p>22 Q. That's okay. I wouldn't have expected 23 you to.</p> <p>24 Did you look at the patent at all?</p> <p>25 A. I glanced at it long enough to realize</p>	<p>116</p> <p>1 A. It is a patent, and it's a patent for 2 Mr. Wahi's product. I know that. But, otherwise, 3 I didn't feel as though it was necessary for me to 4 know anything further.</p> <p>5 Q. No, I agree, that makes sense. I'm just 6 wondering if anybody did explain the patent to 7 you?</p> <p>8 A. If they did, it's all lawyer talk to me 9 so I have no idea what it says.</p> <p>10 Q. Well, do you remember if anyone 11 explained the patent to you?</p> <p>12 A. If they did, I wasn't listening, I'm 13 sorry.</p> <p>14 Q. Okay.</p> <p>15 A. I'm sorry, I don't know anything about 16 patents. I apologize.</p> <p>17 Q. You don't need to apologize for it. I'm 18 just trying to understand what other information 19 you were given to consider as part of your 20 testing.</p> <p>21 A. I don't think that the contents of a 22 patent would have affected the test outcome.</p> <p>23 Q. Okay.</p> <p>24 A. The test -- they could have labeled the 25 substances A, B, C, and D and I still would have</p>

Transcript of Shane Burns

30 (117 to 120)

October 25, 2022

<p style="text-align: right;">117</p> <p>1 performed the test and the results would have been 2 recorded and then they could decipher what A, B, 3 C, and D meant, so which substance is which. In 4 fact, some customers do that. They provide me 5 materials for blind testing so that they and 6 another person have an objective third party who 7 is unaware as to which one is which. 8 Q. Okay. Let's go back to your report now. 9 MS. PETERSON: So this is Exhibit 23. 10 If we could pull that up. 11 BY MS. PETERSON: 12 Q. Mr. Burns, when you prepared this 13 report, did you review any other materials or 14 information apart from what's recorded directly in 15 the report? 16 A. I tried to record in the report anything 17 that I knew of and that I had information on. 18 Q. Okay. 19 A. So I don't think any other outside 20 materials were involved or else I would have 21 wanted to reference that. 22 Q. Okay. And I see the report is dated 23 January 18, 2021. Is that the same day that the 24 testing occurred? 25 A. Testing occurred on January 13th. So</p>	<p style="text-align: right;">119</p> <p>1 A. Yes. 2 Q. Are there any further -- sorry, were 3 there any earlier versions of the report created? 4 A. I wouldn't remember that unless I 5 recorded it there in that revision history. So 6 typically if there is a revision, I would record 7 it right there in that box. 8 Q. Okay. And have you made any further 9 revisions to the report? 10 A. What you have there is, I believe, the 11 actual final version. 12 Q. Okay. So it has -- you have not issued 13 any further revisions? 14 A. As far as I know, no. There was an 15 earlier version of the report. So there are 16 actually two reports that were done the same day, 17 and these were determined to be separate topics. 18 So they were split. So this is A, and then 19 there's a B. So they're actually -- there's a 20 whole nother item, I think, that's tested -- or a 21 couple of items. 22 Q. And what were those items? 23 A. I don't know. I don't think it's 24 relevant to this at all. I can probably look, if 25 that's okay with Trutek. But, otherwise, I don't</p>
<p style="text-align: right;">118</p> <p>1 the report was released five days later. 2 Q. Okay. And was the testing started and 3 completed all in the same day? 4 A. Yeah. 5 Q. And I see that there is a signature here 6 saying that the report was reviewed by Troy 7 Anthony. Who is that? 8 A. He's my general manager. When I 9 complete a report, the report has to be reviewed 10 by somebody else so that major mistakes, typos, 11 and the like are caught, as well as, let's say, 12 some other kind of mistake. But I submit it to 13 someone else for review. So a second pair of 14 eyes, basically, sometimes a fresh pair of eyes 15 can catch mistakes that I otherwise wouldn't after 16 I've looked at a report for too long. 17 Q. Okay. And do you recall how long it 18 took you to prepare the report? 19 A. No. Probably half an hour or an hour, 20 perhaps. 21 Q. And at the bottom of this page, there's 22 a report revision history. Do you see that? 23 A. Yeah. 24 Q. And there's a report version 1, which 25 looks like that's this version?</p>	<p style="text-align: right;">120</p> <p>1 believe it has any relevance to this. 2 Q. Did it involve testing of Trutek 3 products? 4 A. Yes. 5 Q. Did it involve testing of BlueWillow 6 products? 7 A. I don't believe so. 8 Q. Okay. 9 MS. PETERSON: Counsel, we would ask for 10 a copy of that report. 11 MR. KREMEN: I'll take it under 12 advisement. 13 DOCUMENT/DATA REQUESTED: 14 MS. PETERSON: Okay. Can we go to the 15 next page. 16 BY MS. PETERSON: 17 Q. So the very first section, "Test 18 Objective," it states that "The purpose of this 19 test was to determine the magnitude (amount) of 20 surface electrostatic charge created by means of 21 the application of solution and spray containing 22 permanently ionized molecules"; right? 23 MR. KREMEN: Where are you reading from? 24 MS. PETERSON: "Test Objective" right at 25 the top.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

31 (121 to 124)

October 25, 2022

<p>121</p> <p>1 MR. KREMEN: Oh, okay. I see.</p> <p>2 BY MS. PETERSON:</p> <p>3 Q. Did I accurately identify the test</p> <p>4 objective, Mr. Burns?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay. So the purpose of the test was</p> <p>7 not just to determine whether the solution and</p> <p>8 spray exhibited a surface electrostatic charge,</p> <p>9 but also to measure the magnitude or amount of</p> <p>10 that charge; right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And was this test objective</p> <p>13 provided to you by Trutek, or did you draft this?</p> <p>14 A. That was provided by Trutek, yeah.</p> <p>15 Q. Okay. And it looks like we've got a</p> <p>16 section -- Section II describes the test equipment</p> <p>17 that you used; right?</p> <p>18 A. Yeah.</p> <p>19 Q. So on this section page, I see that</p> <p>20 there is a last calibration date of April 2nd,</p> <p>21 2020, for the NanoCoulomb Meter; right?</p> <p>22 A. Correct.</p> <p>23 Q. How often is that equipment calibrated?</p> <p>24 A. We try to do it once a year. The</p> <p>25 exception is that if for some reason the equipment</p>	<p>123</p> <p>1 the interior of a connected Faraday cup.</p> <p>2 And what you'd read out on the screen</p> <p>3 should be the voltage times the capacitance, and</p> <p>4 that should give you the charge. So it's a</p> <p>5 NanoCoulomb Meter. So if you're trying to use</p> <p>6 something in nanocoulombs say, for example, then</p> <p>7 you want a capacitor that's comparable. So...</p> <p>8 Q. Okay. So the readout on the screen</p> <p>9 gives you the voltage and the capacitance that's</p> <p>10 being measured? Did I hear you correctly?</p> <p>11 A. No, what's on the screen is the charge,</p> <p>12 which is the product of voltage times capacitance.</p> <p>13 Q. Okay. So the readout on the screen is</p> <p>14 the charge?</p> <p>15 A. Yes, Q equals CV.</p> <p>16 Q. Okay. Are there ever any instances</p> <p>17 where you would -- apart from when the equipment</p> <p>18 has been marked out of use, are there any</p> <p>19 instances where you would calibrate a piece of</p> <p>20 equipment more frequently than once a year?</p> <p>21 A. Oh, yes.</p> <p>22 Q. When would you do that?</p> <p>23 A. So let's say you're performing your</p> <p>24 functional test shortly before beginning the test.</p> <p>25 So this is typically what you do. So what you</p>
<p>122</p> <p>1 falls out of use, we have to mark it as for</p> <p>2 reference only and set it aside. So, typically,</p> <p>3 if the equipment is out of use for long periods of</p> <p>4 time, at the next point in time in which the</p> <p>5 equipment needs to be calibrated at the one-year</p> <p>6 mark, we check to see, basically, has it been used</p> <p>7 often enough, and then we'd set it aside. So</p> <p>8 under normal circumstances, the equipment is</p> <p>9 calibrated annually.</p> <p>10 Q. Okay. And just, generally speaking, how</p> <p>11 is it calibrated?</p> <p>12 A. So there's -- typically, the way that</p> <p>13 you'd do it is you're taking a measurement. And</p> <p>14 if the measurement is incorrect on a controlled</p> <p>15 amount of charge, then you have to make</p> <p>16 adjustments, and that requires us to open it up</p> <p>17 and make some adjustments inside, and we have a</p> <p>18 procedure for that.</p> <p>19 But the way that you make the accurate</p> <p>20 measurement is you take a controlled capacitor,</p> <p>21 something that has a very tight tolerance, as</p> <p>22 stated by the manufacturer. And you charge that</p> <p>23 up to a specified voltage, usually 1 volt. And</p> <p>24 then you put it into the input of the machine.</p> <p>25 You can even do this by putting it directly into</p>	<p>124</p> <p>1 would do is you'll take that capacitor. You'll</p> <p>2 charge it up using the provided voltage coming out</p> <p>3 of the front of the machine. There's a little red</p> <p>4 output. And then you test the machine.</p> <p>5 And let's say you're -- the charge you</p> <p>6 read on the screen is out of the tolerance of the</p> <p>7 machine's specified accuracies and the tolerance</p> <p>8 of the capacitor that you're measuring. Well,</p> <p>9 that's an indicator that something has gone wrong</p> <p>10 in the machine. So you can't perform testing at</p> <p>11 that point, you have to stop, and you have to</p> <p>12 figure out what's wrong with the machine and</p> <p>13 retake the test.</p> <p>14 Q. Okay.</p> <p>15 A. If the machine needs to be calibrated</p> <p>16 and you recalibrate it, you know, then you have to</p> <p>17 basically update the calibration date, fill out a</p> <p>18 new certificate, all of that. So...</p> <p>19 Q. Okay. Thank you for that explanation.</p> <p>20 Other than that functional test, do you</p> <p>21 do any other types of tests prior to using a piece</p> <p>22 of equipment to ensure it's operating correctly?</p> <p>23 A. I mean, you want to make sure that it's</p> <p>24 on and operates properly, and that functional test</p> <p>25 really covers quite a lot.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

32 (125 to 128)

October 25, 2022

<p>125</p> <p>1 Q. Okay.</p> <p>2 A. You're making sure that the voltage</p> <p>3 output is correct. You're making sure that the</p> <p>4 machine is reading the right amount of charge on a</p> <p>5 specified capacitor. And, of course, you know,</p> <p>6 along with that, you're making sure that</p> <p>7 everything is connected properly. So --</p> <p>8 Q. Okay.</p> <p>9 A. -- it's not really -- it's pretty</p> <p>10 comprehensive by just performing a very simple</p> <p>11 test.</p> <p>12 Q. And I don't see that recorded anywhere</p> <p>13 in your report that that type of functional test</p> <p>14 was performed here; was it?</p> <p>15 A. No, I don't see that I've recorded that</p> <p>16 here in the report.</p> <p>17 Q. So do you recall if you performed that</p> <p>18 functional test prior to running your -- prior to</p> <p>19 running the test described in this test report?</p> <p>20 A. Yeah, you have to perform that test</p> <p>21 every time.</p> <p>22 Q. So even though it's not recorded here,</p> <p>23 you believe that you did run it.</p> <p>24 A. Oh, yes.</p> <p>25 Q. Okay.</p>	<p>127</p> <p>1 of pigskin used in this experiment?</p> <p>2 A. Yes. I guess you could say one original</p> <p>3 piece. It's clearly -- it was cut into smaller</p> <p>4 pieces in order to make the thing work.</p> <p>5 Q. Of course. And the skin was cut into</p> <p>6 those smaller pieces by the Trutek personnel;</p> <p>7 right?</p> <p>8 A. Yeah.</p> <p>9 Q. And you don't recall whether that</p> <p>10 happened in your laboratory or before they</p> <p>11 arrived; right?</p> <p>12 A. No, I don't remember. I think that it</p> <p>13 was cut before they arrived, but it might have</p> <p>14 been done in the lab. We always keep a pair of</p> <p>15 scissors around in case samples do need to be cut.</p> <p>16 So it wouldn't surprise me if it was cut in the</p> <p>17 lab.</p> <p>18 Q. Okay. But you don't recall necessarily</p> <p>19 watching them cut the skin into the 12 samples;</p> <p>20 right?</p> <p>21 A. No, I don't understand why this is</p> <p>22 important. But, no, I don't remember whether or</p> <p>23 not I watched them cut the samples.</p> <p>24 Q. Okay. So you don't know what instrument</p> <p>25 was used to cut the samples?</p>
<p>126</p> <p>1 MS. PETERSON: Let's go to the next</p> <p>2 page.</p> <p>3 BY MS. PETERSON:</p> <p>4 Q. And here we have some information on the</p> <p>5 Faraday cup. And it looks like it has the same</p> <p>6 last date of calibration of April 2nd, 2020. Is</p> <p>7 that piece of equipment also typically</p> <p>8 recalibrated once a year?</p> <p>9 A. It's part of the system. So they get</p> <p>10 calibrated together.</p> <p>11 Q. Okay. So that functional test you</p> <p>12 described would also be ensuring that the Faraday</p> <p>13 cup is operating properly?</p> <p>14 A. The cup has to be connected to the</p> <p>15 machine in order to perform that test.</p> <p>16 Q. Okay.</p> <p>17 A. Right.</p> <p>18 MS. PETERSON: Let's go to the next</p> <p>19 page.</p> <p>20 BY MS. PETERSON:</p> <p>21 Q. Okay. So here we have a depiction of</p> <p>22 the piece of pigskin which measured approximately</p> <p>23 12 inches by 12 inches; right?</p> <p>24 A. That's what it says, yes.</p> <p>25 Q. Okay. And so there was just one piece</p>	<p>128</p> <p>1 A. It could be a pair of scissors. It</p> <p>2 could be, I don't know, a box cutter, perhaps. I</p> <p>3 have no idea what -- at this point what was used</p> <p>4 to cut the samples. I did not specify that in the</p> <p>5 report. It did not seem like something I needed</p> <p>6 to include here.</p> <p>7 Q. And I assume you also then don't know</p> <p>8 how the pigskin was handled, whether it was you</p> <p>9 using some other object or with gloves or bare</p> <p>10 hands?</p> <p>11 A. Well, I know I was wearing gloves, but I</p> <p>12 don't know that I actually handled the samples</p> <p>13 with gloves, because we have a pair of plastic</p> <p>14 tongs that we would use typically for this test.</p> <p>15 So other versions of this test, other types of</p> <p>16 testing that involve, say, a Faraday cup and a</p> <p>17 NanoCoulomb Meter often uses plastic tongs. That</p> <p>18 way any charge that's on your person doesn't get</p> <p>19 transferred. So I may have used gloves. We may</p> <p>20 have only handled them with the tongs. I don't</p> <p>21 know.</p> <p>22 Q. Okay. But you don't know how the Trutek</p> <p>23 personnel handled the pigskin when it was cut into</p> <p>24 the 12 pieces; right?</p> <p>25 MR. KREMEN: Calls for speculation.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

33 (129 to 132)

October 25, 2022

<p>129</p> <p>1 THE WITNESS: I don't know.</p> <p>2 BY MS. PETERSON:</p> <p>3 Q. And then I understand that because there</p> <p>4 were two products, three tests each, does that</p> <p>5 mean that there were six sections of pigskin used</p> <p>6 in your test?</p> <p>7 A. I believe so. That's what it says.</p> <p>8 Q. Okay. Do you know what happened or what</p> <p>9 was done with the remaining six pieces of pigskin?</p> <p>10 A. Well, I assume they were used -- yeah,</p> <p>11 they were used in the other test.</p> <p>12 Q. Okay. And then below that picture, it</p> <p>13 says that each product test sample created was 4</p> <p>14 inches by 3 inches, and then it says it was</p> <p>15 uniformly coated with test product.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So does that mean that the test product</p> <p>19 was uniformly spread over the entire surface area</p> <p>20 of the 4-by-3-inch piece?</p> <p>21 A. Yes, that's what that's intended to</p> <p>22 mean. The idea being that the substance wouldn't</p> <p>23 be unevenly distributed on the substrate.</p> <p>24 Q. Okay. I'm sorry, the idea being that</p> <p>25 the substance would not be unevenly distributed.</p>	<p>131</p> <p>1 MR. KREMEN: Oh, God.</p> <p>2 THE WITNESS: No, I don't know.</p> <p>3 BY MS. PETERSON:</p> <p>4 Q. Okay. If you don't know, that's fine.</p> <p>5 Do you know how old the sample was?</p> <p>6 Like how much time had passed from when the sample</p> <p>7 was first prepared to when it was used in your</p> <p>8 lab?</p> <p>9 A. No.</p> <p>10 Q. Okay. Did you do anything to check the</p> <p>11 integrity of the pigskin before completing the</p> <p>12 test?</p> <p>13 A. No.</p> <p>14 Q. Do you know if the Trutek personnel did</p> <p>15 anything to check the integrity of the pigskin</p> <p>16 before the test?</p> <p>17 A. I don't know. I can't answer that.</p> <p>18 Q. Okay. At the bottom of the section, it</p> <p>19 indicates that all testing was performed at a</p> <p>20 control temperature of 72 degrees plus or minus</p> <p>21 2 degrees Fahrenheit and 12 degrees percent</p> <p>22 relative humidity plus or minus 2 degrees -- or</p> <p>23 I'm sorry, 2 percent relative humidity -- let me</p> <p>24 start over again.</p> <p>25 A. Sure.</p>
<p>130</p> <p>1 A. That's a double negative, right. The</p> <p>2 idea being that the substance would be evenly</p> <p>3 applied.</p> <p>4 Q. Across the entire substrate?</p> <p>5 A. Across the entire substrate, yes.</p> <p>6 Q. Great. Thank you.</p> <p>7 And the pigskin itself, it was dried.</p> <p>8 A. I don't know what that means, but it was</p> <p>9 dry. I guess it wasn't wet.</p> <p>10 Q. Like, there wasn't some other apparatus</p> <p>11 being used in your lab to moisten or keep the skin</p> <p>12 wet during the testing procedure; right?</p> <p>13 A. No. No, nothing like that.</p> <p>14 Q. Okay. Do you know where the pigskin</p> <p>15 sample was obtained from?</p> <p>16 A. No.</p> <p>17 Q. Do you know when it was obtained?</p> <p>18 A. No.</p> <p>19 Q. Do you know how it was stored prior to</p> <p>20 the test?</p> <p>21 A. No. I don't remember anything</p> <p>22 particular being said about that.</p> <p>23 Q. Okay. Do you -- I'm sorry, I have to</p> <p>24 ask these questions, but do you know what part of</p> <p>25 the pig the skin came from?</p>	<p>132</p> <p>1 Q. Testing was performed at a control</p> <p>2 temperature of 72 degrees plus or minus 2 degrees</p> <p>3 Fahrenheit?</p> <p>4 A. Correct.</p> <p>5 Q. And the relative humidity was 12 percent</p> <p>6 plus or minus 2 percent?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. How were those conditions</p> <p>9 selected?</p> <p>10 A. Because those are the standard</p> <p>11 conditions for performing testing on electrostatic</p> <p>12 charge on an object in a Faraday cup.</p> <p>13 Q. Okay.</p> <p>14 A. The reason for that is if you let the</p> <p>15 humidity go too high, then humidity suppresses</p> <p>16 electrostatic fields. If you have a high</p> <p>17 humidity, it would alter the reliability of the</p> <p>18 test.</p> <p>19 Q. Okay.</p> <p>20 A. And the temperature was just picked</p> <p>21 because I like it. No, that's not true. I'm</p> <p>22 joking. That temperature is actually a really</p> <p>23 standard temperature used in all ANSI documents,</p> <p>24 in ANSI standards. So it's very typical for ANSI</p> <p>25 documents to reference 72 degrees plus or minus</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 25, 2022

<p style="text-align: right;">133</p> <p>1 2 degrees Fahrenheit. Someone picked that a long 2 time ago and that's been generally recognized as 3 what's called room temperature, even though 4 obviously a regular room isn't necessarily going 5 to be exactly 72 degrees. But that's the 6 temperature at which you have to hold the chamber 7 at in order to have repeatability. 8 So -- and the two humidities that are 9 usually chosen by ANSI, they're almost in all of 10 the ANSI documents have a 12 percent set point and 11 a 50 percent set point in some, but that's not -- 12 that's not always the case. But 12 percent is in 13 nearly every ANSI document. And that includes the 14 one that describes this test method. 15 Q. Okay. And that's because I think you 16 said that if the humidity is any higher, then it 17 messes with the electrostatic fields. I can't 18 remember how -- 19 A. Yeah, if you get up to 55 percent 20 humidity, then you're going to start seeing the 21 humidity suppressing the electrostatic fields. So 22 things that were -- so materials that were, for 23 example, insulators at very low humidity, say 24 12 percent, begin becoming dissipative or even 25 conductive depending on how porous they are at</p>	<p style="text-align: right;">135</p> <p>1 A. I mean, at least three times, but 2 probably -- probably at least three times, yeah. 3 I'm sure I recorded that somewhere perhaps or -- 4 but at any rate, I did it in front of the 5 customer. 6 Q. Okay. 7 A. They saw that I had done it. 8 Q. Okay. So each of the six individual 9 sections that was used in this test was measured 10 repeatedly after being neutralized? 11 A. Yeah. 12 Q. Okay. And in Item No. 2, it says, 13 "Before applying any test product sample, the 14 substrate was neutralized again." 15 Why was that? 16 A. Well, you've just taken the substrate, 17 right, and tested it by itself repeatedly after 18 ionizing it to see that it was indeed neutralized; 19 right? But in the process of performing that 20 test, you've moved it. You've pushed it through 21 the air and possibly triboelectrically charged it 22 removing it from the cup. So you need to 23 neutralize it again before you apply the substance 24 to it, or else it's going to have some base charge 25 to it.</p>
<p style="text-align: right;">134</p> <p>1 very high humidities. 2 So you have to keep the humidity in a 3 controlled state. And the generally accepted 4 state has been 12 percent because this was 5 actually crafted by the electronics industry. 6 This is sort of like an air-conditioned room in 7 the wintertime. So that's why 12 percent was 8 chosen. 9 Q. Okay. 10 A. There were round robin tests to try to 11 establish that. 12 Q. Okay. Looking at the next section under 13 "Methodology" now. I see in Item 1 that's talking 14 about the ionization process that you referred to 15 earlier; correct? 16 A. Correct. 17 Q. Okay. And so it looks like the test 18 substrates were ionized to neutralize existing 19 charge. And then it says they were measured 20 repeatedly to see how much the substrate material 21 of the pigskin would affect the result; right? 22 A. Correct. 23 Q. Okay. So how many -- I mean, how many 24 times -- it says "measured repeatedly." How many 25 times is that?</p>	<p style="text-align: right;">136</p> <p>1 Q. Okay. And how much time typically would 2 it -- or how much time did it take to complete 3 this first step, the neutralizing and testing of 4 the neutralized substrate? 5 A. Well, we did each one, right. So you 6 would do this with one substrate, and then you 7 would apply the material. And then you would test 8 the material, and then grab another substrate and 9 do the same process again. So it wasn't all 10 done -- you didn't perform all of the 11 neutralization of charge on all of the materials 12 at the same exact time. You did each one. 13 Q. Okay. 14 A. Right? So logically you're trying to -- 15 you're performing the neutralization on the 16 substrate, testing it, neutralizing it again, 17 applying the substance that you're actually trying 18 to get the test data on, and then putting it in 19 the Faraday cup, testing that, and then -- and 20 then removing that, resetting the system, and then 21 moving to the next substrate. 22 Q. Okay. And so for each substrate, 23 approximately how long does that process take? 24 A. I don't know. Maybe half a minute. 25 Q. Half a minute to ionize it and then test</p>

Transcript of Shane Burns

35 (137 to 140)

October 25, 2022

<p>137</p> <p>1 it?</p> <p>2 A. Yeah, maybe a minute or two at most, but</p> <p>3 not a huge amount of time.</p> <p>4 Q. Okay. So once it's placed in the</p> <p>5 Faraday cup, I mean, how long does it take to</p> <p>6 record the measurement? That's pretty quick?</p> <p>7 A. Yeah, like one, maybe two seconds. A</p> <p>8 few seconds.</p> <p>9 Q. Okay.</p> <p>10 A. Yeah, you're reading it off the screen,</p> <p>11 and then you're typing it into your spreadsheet or</p> <p>12 database or whatever it is.</p> <p>13 Q. Okay. And is it correct that you did</p> <p>14 not measure the charge on an unionized sample of</p> <p>15 the pigskin as a control in this experiment?</p> <p>16 A. No, the control was the ionized sample</p> <p>17 of the pigskin. The control --</p> <p>18 Q. Yeah, I understand that. But you did</p> <p>19 not also measure or test an unionized piece of</p> <p>20 pigskin; right?</p> <p>21 MR. KREMEN: Objection to the form.</p> <p>22 You can answer.</p> <p>23 THE WITNESS: Okay. I think we may have</p> <p>24 actually at some point tested the pigskin by</p> <p>25 itself. I don't think that we recorded that,</p>	<p>139</p> <p>1 A. Well, we did. You know, we did because</p> <p>2 that part we understood was actually data that</p> <p>3 could affect the result.</p> <p>4 Q. Okay.</p> <p>5 A. So we wanted to record that.</p> <p>6 Q. Okay. And then next in Item 3, it</p> <p>7 explains that the solution and spray test products</p> <p>8 were coated using a cotton swab with approximately</p> <p>9 1.5 milliliters for a smooth and uniform</p> <p>10 application. And that coating process, again,</p> <p>11 that was conducted by the Trutek personnel?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. And the specific pigskin</p> <p>14 substrates that were used were those same six</p> <p>15 samples that had previously been ionized and</p> <p>16 measured in Step 1?</p> <p>17 A. Yes, like I said, we didn't ionize them</p> <p>18 all at once. This is a series of steps that we</p> <p>19 performed on each individual substrate; right? So</p> <p>20 we didn't -- I just want to make sure we're clear.</p> <p>21 We applied the material on one specimen, on one</p> <p>22 substrate, tested that, and then started over</p> <p>23 again at Step 1 with the next substrate.</p> <p>24 Does that make sense?</p> <p>25 Q. That does, yeah. And that wasn't</p>
<p>138</p> <p>1 though, here in this report.</p> <p>2 BY MS. PETERSON:</p> <p>3 Q. Why not?</p> <p>4 A. Because ultimately that was not what was</p> <p>5 part of the test. We were testing the substance</p> <p>6 on neutralized pigskin.</p> <p>7 Q. Okay. So why did you at some point test</p> <p>8 the pigskin by itself?</p> <p>9 A. I think we may have done it just to make</p> <p>10 sure we were set up and ready to work. We</p> <p>11 didn't -- I don't think we were doing it in</p> <p>12 particular to test the -- I think we may have done</p> <p>13 it one time or maybe a couple of times, but it was</p> <p>14 just to make sure that we had everything up and</p> <p>15 operating and ready to go.</p> <p>16 Q. Okay.</p> <p>17 A. We were practicing because the issue is,</p> <p>18 is we were about to spread something kind of messy</p> <p>19 on the substrate, you know, and you can't practice</p> <p>20 once you've got -- once you've got the gunk spread</p> <p>21 on there, so to speak, you know, you mess that up.</p> <p>22 There's no undoing it.</p> <p>23 Q. Yeah, sure.</p> <p>24 But you could have also practiced with</p> <p>25 the ionized pigskin, as well; right?</p>	<p>140</p> <p>1 spelled out in your report. So thank you for</p> <p>2 clarifying that.</p> <p>3 A. Yeah, because you couldn't apply it to</p> <p>4 all of them at once and then test them because the</p> <p>5 time it would take to do that, you know, they</p> <p>6 might -- you know, the environment might dry them</p> <p>7 out or something, you know.</p> <p>8 Q. Okay. And then looking at Step 4, it</p> <p>9 says that after waiting for four minutes --</p> <p>10 A. Yeah.</p> <p>11 Q. -- or three to five minutes after</p> <p>12 coating, then the samples were placed into the</p> <p>13 cup. So why -- what was going on in that</p> <p>14 four-minute time frame?</p> <p>15 A. So my understanding was that what we</p> <p>16 were trying to accomplish was we're sort of trying</p> <p>17 to imitate something that happens in,</p> <p>18 quote-unquote, real life, let's call it.</p> <p>19 Q. Okay.</p> <p>20 A. So, you know, you're applying this</p> <p>21 substance and waiting for it to, I guess, absorb</p> <p>22 or take hold or whatever the case may be. But</p> <p>23 you're doing something similar to what would</p> <p>24 happen in, say, a real life situation.</p> <p>25 Q. Okay. So that waiting time of</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

36 (141 to 144)

October 25, 2022

<p>141</p> <p>1 four minutes, that was intentional as opposed to</p> <p>2 just a function of the time that it takes to get</p> <p>3 the equipment set up?</p> <p>4 A. The equipment was already set up. So we</p> <p>5 were -- what we were doing was trying to, I guess,</p> <p>6 simulate a behavior or simulate a pattern of what</p> <p>7 someone would actually do with this product.</p> <p>8 Q. Okay. And that time period of waiting</p> <p>9 four minutes, I assume that was something that was</p> <p>10 requested by Trutek?</p> <p>11 A. Yeah.</p> <p>12 Q. That wasn't your suggestion?</p> <p>13 A. No.</p> <p>14 Q. Okay. Just below this, we've got an</p> <p>15 indication of which samples were measured or</p> <p>16 tested; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know when the Trutek</p> <p>19 samples were manufactured?</p> <p>20 A. No.</p> <p>21 Q. Do you know their expiration date?</p> <p>22 A. No.</p> <p>23 Q. Do you know when the BlueWillow products</p> <p>24 were manufactured?</p> <p>25 A. No.</p>	<p>143</p> <p>1 Q. Okay. Yeah, you actually have a pretty</p> <p>2 good memory about that. Yeah.</p> <p>3 A. I don't remember what they were called.</p> <p>4 So I don't have that great a memory.</p> <p>5 Q. Okay.</p> <p>6 A. That's why we write things down; right?</p> <p>7 Q. Okay. But so certainly in this second</p> <p>8 round of testing, there's only one Trutek product</p> <p>9 described in the report; right?</p> <p>10 A. Yes, it's identified as TTK-NS; right?</p> <p>11 Q. I'm sorry, my phone just rang. I didn't</p> <p>12 hear what you said. So TTK-NS, yes. Okay. So</p> <p>13 you did not test a second Trutek product as part</p> <p>14 of this second round testing?</p> <p>15 A. No, nothing else.</p> <p>16 Q. Okay.</p> <p>17 A. If I did, I certainly didn't include it</p> <p>18 in the report; did I? No, I don't have anything</p> <p>19 else listed.</p> <p>20 Q. And if you had tested it, it would have</p> <p>21 been included in the report?</p> <p>22 A. Yeah, unless it was just -- I can't</p> <p>23 think of a reason why it wouldn't be included,</p> <p>24 but, you know, the customer requested that this be</p> <p>25 what was tested and included. So I assume this is</p>
<p>142</p> <p>1 Q. Do you know their expiration date?</p> <p>2 A. No.</p> <p>3 Q. When you're testing products for your</p> <p>4 customers, do you typically want to make sure that</p> <p>5 you're testing products that have not expired?</p> <p>6 A. Electrostatic products for the most part</p> <p>7 don't usually have a listed expiration date. And</p> <p>8 those that do, typically we're applying it or the</p> <p>9 customer is applying it not very long before we</p> <p>10 actually test it. And those are mostly -- for the</p> <p>11 most part those are materials that have not been</p> <p>12 manufactured very long before.</p> <p>13 Q. Okay. Now, in the course of this second</p> <p>14 round of testing, were you ever asked to test any</p> <p>15 other products of Trutek?</p> <p>16 A. Well, there was a spray and there was</p> <p>17 some kind of gel; right?</p> <p>18 Q. Yeah.</p> <p>19 A. So there was those two things. And then</p> <p>20 this report all we tested was, it looks like, the</p> <p>21 spray. But I know there was that first test that</p> <p>22 we did back in 2019. I'd have to look at the</p> <p>23 report, but it seems like there were a couple, at</p> <p>24 least two different products that were tested in</p> <p>25 that report, as well.</p>	<p>144</p> <p>1 all that was tested.</p> <p>2 Q. Okay. Let's take a look at Section V</p> <p>3 now, the "Testing." So for each product we have a</p> <p>4 total surface electrostatic charge recorded here</p> <p>5 for three experiments for each sample; right?</p> <p>6 A. Correct.</p> <p>7 Q. So those would be the three replicates?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And just to confirm -- oh, and I</p> <p>10 guess that would be the three samples of pigskin?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And so each sample of pigskin, it</p> <p>13 was only tested and measured once; is that</p> <p>14 correct?</p> <p>15 A. Well, I certainly couldn't measure it</p> <p>16 twice once we had coated it in all of that fluid.</p> <p>17 You know, I mean, you put the fluid on and you</p> <p>18 toss it in that cup and now it's touched the wall</p> <p>19 of a cup. You can't retest that.</p> <p>20 Q. No, I'm just checking to make sure that</p> <p>21 there was one test per sample.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. And then there's a note at the</p> <p>24 bottom of the table. Can you read that?</p> <p>25 A. Yeah.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

37 (145 to 148)

October 25, 2022

<p>145</p> <p>1 Q. Okay. It says that the "Neutralized 2 substrates' total electrostatic charge was 3 measured at the beginning and at the end." 4 What do you mean "at the end"? At the 5 end of each test, it says. 6 A. I don't know why it says at the end, 7 but -- because I don't know how we would have 8 tested them at the end. It's got to be a typo. 9 But, yeah, we neutralized the substrates, and 10 we -- I guess "at the end" must mean after we've 11 applied the coating to it. But at any rate, yeah. 12 Well, at the end -- beginning and end 13 of, what, ionization. I don't know. But -- yeah, 14 we measured them before we applied the substance, 15 and then we applied the substance and then tested 16 them with the substance. 17 That's a poorly written sentence; isn't 18 it? I apologize for that. That's got to be my 19 fault. 20 Q. That's okay. 21 So do you remember or do you think you 22 have an idea of what happened? 23 A. Well, I described it earlier. We 24 neutralized the substrate, and then we measured 25 them; right? And applied the material to the</p>	<p>147</p> <p>1 relation to your reference. So your reference is 2 the outside of the Faraday cup and the inside of 3 the Faraday cup. So it's a cup within a cup 4 separated by an air gap and sometimes spacers, in 5 this case they were Teflon spacers. So they 6 wouldn't be contributing to the measurement; 7 right? 8 Q. Okay. 9 A. And so what you have is basically -- if 10 it's a negative charge, you have slightly more 11 electrons on the -- which are negatively charged, 12 on the surface of the material than you would have 13 on your reference point. 14 Q. Okay. And so -- 15 A. So if you had slightly fewer electrons 16 on the surface of the material than you would have 17 on your reference point, it would be a positive 18 charge. 19 Q. Okay. And for all of the neutralized 20 substrate measurements, were they all negatively 21 charged? 22 A. Yeah, this is to say -- well, yeah, it 23 looks like they were. So the average was negative 24 .028. So that's not very big at all. So, yeah, 25 small amounts of charge, nothing significant.</p>
<p>146</p> <p>1 substrate and then performed the test. So we have 2 the measurement for the test, and then we have the 3 measurement up above in the table after we had 4 applied the material. 5 Q. But you're not sure based on this -- or 6 do you know, were the samples -- were the 7 substrates neutralized again after? 8 A. No, you didn't neutralize them after you 9 applied the goop to them, the liquid. 10 Q. Okay. 11 A. That wouldn't make any sense. 12 Q. Okay. Okay. So anyways, the 13 measurements for the neutralized substrates, you 14 report that they were measured to have less than 15 minus 0.07 nanocoulombs? 16 A. Correct. Yeah. 17 Q. Okay. In all cases. 18 And then averaging minus 0.023 19 nanocoulombs? 20 A. Right. Very small charges on the actual 21 substrates themselves. So the substrates are not 22 significantly charged is what we're saying there. 23 Q. Okay. And so they -- the neutralized 24 substrates, they had a negative charge? 25 A. You can have a negative charge in</p>	<p>148</p> <p>1 Q. Because it looks like you only have the 2 maximum charge and the average charge reported 3 here? 4 A. Yeah. So -- well, I suppose you could 5 say it would be possible for there to be a 6 positive charge in there, but it couldn't have 7 been a very large one. 8 Q. Okay. And this would be the highest 9 measurement as well as the average of all six of 10 the substrate samples that were prepared? 11 A. Yeah. 12 Q. Okay. So you don't have any 13 measurements reported here based on each piece of 14 skin separately? 15 A. It doesn't look like I recorded that in 16 the report. 17 Q. Okay. And then the -- I would also 18 assume then that means that the charge that was 19 measured for the neutralized substrate was not 20 subtracted out or removed from the total surface 21 electrostatic charge that's reported in the table 22 for each of those samples? 23 A. It doesn't look like it here, no. 24 Q. Okay. And then the final table, "Data 25 Results," here you just took the average total</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

38 (149 to 152)

October 25, 2022

<p>149</p> <p>1 surface electrostatic charge for each product 2 divided by the total surface area of the substrate 3 in square centimeters to come up with a charge per 4 square centimeter?</p> <p>5 A. Yeah, so we were basically trying to 6 figure out how much you had based on surface area. 7 And, you know, obviously the law of averages had 8 to apply. So you took the total charge of the 9 applied substance and the substrate, and then you 10 divided it by the amount of surface area that you 11 had.</p> <p>12 So it wasn't -- there's not a very 13 clear-cut way of doing this if you wanted to 14 associate, say, a square centimeter-age, I guess, 15 or a surface area to the amount of charge. So 16 what we're trying to do is estimate the amount of 17 charge that you might find in any given average 18 square of the material.</p> <p>19 Q. Okay. And then it looks like the 20 average charge per square of material, it was 21 higher for the BlueWillow product than it was for 22 the Trutek product; right?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. And then if we go back and look 25 at the table above it real quick, the total</p>	<p>151</p> <p>1 and 2, we're assuming that a consistent amount of 2 the material was applied. So you think one 3 explanation for the difference in surface 4 electrostatic charge might be the consistency in 5 the material -- the test material itself?</p> <p>6 A. Yeah. And I believe we used the same 7 amount each time on this one because I think -- in 8 fact, I think it even says that we took a pipette 9 and tried to draw out material out of the 10 containers using a pipette that would measure the 11 exact same amount.</p> <p>12 So we had consistency in the amount, but 13 we didn't get the same consistency in the measured 14 charge. So we knew that it was, I think, 15 something like 1.5 milliliters of fluid applied to 16 each substrate.</p> <p>17 Q. So given that a consistent amount of 18 each sample was applied to the substrate, you were 19 expecting to get a similar surface electrostatic 20 charge for each sample; right?</p> <p>21 A. Yeah.</p> <p>22 Q. Can you think of -- or did you have any 23 other ideas for why the discrepancies for the 24 BlueWillow product?</p> <p>25 A. No, that would be speculation. I didn't</p>
<p>150</p> <p>1 surface electrostatic charge measurements reported 2 for the three samples of the Trutek product, those 3 are all pretty close to each other?</p> <p>4 A. Yeah. Yeah.</p> <p>5 Q. For the BlueWillow product, though, 6 that's a pretty -- it's a much bigger range; 7 right?</p> <p>8 A. Yeah. There's a pretty small one there 9 on the second experiment. So it's -- it's got 10 some inconsistency to that material.</p> <p>11 Q. When you said there's a -- I'm sorry, 12 you said there's a pretty small one there on the 13 second experiment. What are you talking about?</p> <p>14 A. Yeah, so Experiment 1 had .85 15 nanocoulombs; right? And then Experiment 2 had 16 only .09 of the BlueWillow product. Both the same 17 amount of substance was applied in both 18 situations. That means that your chances of 19 having consistency -- or a consistent charge from 20 that substance is not great. And what you're 21 hoping for is that you get the same charge or 22 close to the same charge repeatedly. So that 23 proves that you have consistency in the material.</p> <p>24 Q. Okay. So I just want to make sure I 25 understand. So the variation between Experiment 1</p>	<p>152</p> <p>1 really want to guess at that.</p> <p>2 Q. Did anybody ever ask you to repeat the 3 test in view of the variability and results 4 reported for the BlueWillow product?</p> <p>5 A. No, but if you're interested, I can try 6 to come up with a quote.</p> <p>7 Q. No, that's okay, but thank you.</p> <p>8 Okay. Let's look at the last page. And 9 here we have the conclusions. It looks like 10 Conclusion 1 just, again, restates the results 11 that you objected; right?</p> <p>12 A. Sure. Yeah.</p> <p>13 Q. All right. And then the second 14 conclusion, you state that the two test products 15 both demonstrated the presence of a surface 16 electrostatic charge of similar order of 17 magnitude; right?</p> <p>18 A. Yeah, they are similar order of 19 magnitude.</p> <p>20 Q. Okay. What exactly are you using to 21 determine whether it's a similar order of 22 magnitude?</p> <p>23 A. My order of magnitude we're saying that 24 it's the same power of 10, right. That's what 25 order of magnitude means. So let's say you've got</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

39 (153 to 156)

October 25, 2022

<p style="text-align: right;">153</p> <p>1 two variables -- or two measurements that you're 2 measuring. Let's say you're measuring something 3 that's -- I don't know, that's 100 nanocoulombs 4 and another one that's 200 nanocoulombs. Well, 5 they're in the same order of magnitude; right? 6 There's a big difference between 7 something that's 100 nanocoulombs and something 8 that's a thousand nanocoulombs. Now they're in 9 different order of magnitude. So that's what that 10 means. 11 Q. Okay. Thank you. 12 And were you asked by Trutek to provide 13 a conclusion as to whether the surface 14 electrostatic charge of the Trutek and the 15 BlueWillow products were of the same order of 16 magnitude? 17 A. I don't remember if they specifically 18 asked for that. I provided it because I felt as 19 though it was -- that basically what we were 20 trying to talk about -- I mean, you remember at 21 the very beginning of this, we were trying to find 22 out what the magnitude was. That was our stated 23 goal, was to find out what the magnitude was of 24 the charge. So if they were the same order of 25 magnitude, then that would be stated in our</p>	<p style="text-align: right;">155</p> <p>1 doesn't mean that one is preferred or better or 2 worse. It doesn't matter to me. 3 Q. Okay. 4 A. That's something somebody else can 5 bicker about. But which one is bigger or which 6 one is smaller in terms of measurement, that's 7 important to note because you want to be able to 8 differentiate what stands out. 9 Q. Okay. And then one last question on 10 this report. After you prepared it, who did you 11 provide it to, Mr. Wahi or -- 12 A. I provided it to Mr. Wahi. Yeah, he was 13 the customer. 14 Q. Okay. And did Mr. Wahi or anybody else 15 from Trutek request any revisions or changes to 16 the report? 17 A. Well, I already told you, there was a 18 version of this where there were actually a whole 19 bunch of -- basically two tests and one report -- 20 or two separate test reports that he explained to 21 me clearly were intended to be two separate 22 reports, not the same. And so I had to split that 23 out. 24 So what I did is I had a report No. 337, 25 and we split it into an A and a B because they</p>
<p style="text-align: right;">154</p> <p>1 conclusion. 2 Q. Okay. 3 A. If they were in a different order of 4 magnitude, we would have to say that too. 5 Q. And that's exactly why I was wondering, 6 because the test objective doesn't say anything 7 about comparing the surface charge of the two 8 products. It just says that the purpose of the 9 test was to determine the magnitude of the surface 10 electrostatic charge. So -- 11 A. That's fair. 12 Q. So I was wondering why your conclusion 13 contains the -- you know, not just the magnitude 14 of the surface charge that was measured, but also 15 an assessment of the order of magnitude relative 16 between the two? 17 A. That's just typical stuff that people 18 ask for in a test or expect to see in the test 19 anyway, is they send me a bunch of, say, 20 materials, foam or plaques or something like that, 21 and they label them some alphanumeric group 22 number. And I tell them -- I'll test and tell 23 them which one is the largest or the smallest or 24 whatever the case may be or if I noticed anything 25 unusual, and that's stated in the conclusions. It</p>	<p style="text-align: right;">156</p> <p>1 were separate -- of separate interests to him. 2 They were not the same. It was comparing the same 3 substance to two other substances, and he didn't 4 want them to be compared. There was something 5 that wasn't relevant to having them both in the 6 same report. 7 Q. Okay. Sorry, you just mentioned a 337A 8 and 337B. Is that something written on this 9 report? 10 A. Yes. 11 Q. Where? 12 A. So in the footer of every single page, I 13 say what report number this is. 14 Q. Yeah, it looks like it's 215. 15 A. Okay. So you're looking at -- 16 Q. Oh, I'm looking at the wrong one, I'm 17 sorry. 18 A. Okay. What we have on display is 337A. 19 Q. Yeah, I'm looking at my own copy. I 20 apologize, I have the wrong one up. So, yeah, I 21 see that, 337A. Thank you. 22 MS. PETERSON: Okay. Let's go off the 23 record and take a short break. 24 THE VIDEOGRAPHER: We're going off the 25 record. The time is now 2:46 p.m.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

40 (157 to 160)

October 25, 2022

<p>157</p> <p>1 (Recess from the record.)</p> <p>2 THE VIDEOGRAPHER: We're back on the</p> <p>3 record. The time is now 2:59 p.m.</p> <p>4 BY MS. PETERSON:</p> <p>5 Q. Mr. Burns, I'm just going to ask you</p> <p>6 again, did you speak to anybody during the prior</p> <p>7 break or any other break today --</p> <p>8 A. No.</p> <p>9 Q. -- about the testimony you provided</p> <p>10 today at the deposition?</p> <p>11 A. No.</p> <p>12 MS. PETERSON: Okay. I'd like to mark</p> <p>13 one last exhibit. Let's pull up Dr. Ermakov's</p> <p>14 report. This is my Item No. 4, Jennifer --</p> <p>15 actually, sorry, my Item No. 5.</p> <p>16 THE REMOTE TECHNICIAN: Okay. Thank</p> <p>17 you.</p> <p>18 MS. PETERSON: Okay. And we will mark</p> <p>19 this as Exhibit -- actually, is it Exhibit 26?</p> <p>20 MR. KREMEN: It's 27. 26 was the image</p> <p>21 of the NanoBio Protect -- the NasalGuard -- the</p> <p>22 NanoBio Protect product and the NasalGuard</p> <p>23 product.</p> <p>24 MS. PETERSON: You're right. That's</p> <p>25 right. Exhibit 26 was the two images of the</p>	<p>159</p> <p>1 I'm not aware of that.</p> <p>2 Q. Okay.</p> <p>3 MS. PETERSON: Well, let's take a look</p> <p>4 at the last page.</p> <p>5 BY MS. PETERSON:</p> <p>6 Q. So you can see test results that are</p> <p>7 reported here. There's a section for "Blank</p> <p>8 Uncoated Substrate"; right?</p> <p>9 Do you see that?</p> <p>10 MR. KREMEN: Where are we talking about?</p> <p>11 What page?</p> <p>12 MS. PETERSON: Page 3. It's up on the</p> <p>13 screen.</p> <p>14 THE WITNESS: Yeah, I see it there.</p> <p>15 BY MS. PETERSON:</p> <p>16 Q. Okay. And then there's two NasalGuard</p> <p>17 products listed here; right?</p> <p>18 A. I see that.</p> <p>19 Q. Okay. So there's a NasalGuard Airborne</p> <p>20 Particle Blocker and a NasalGuard Misting Spray.</p> <p>21 Do you see those listed?</p> <p>22 A. I see those.</p> <p>23 Q. Okay. Now, the NasalGuard Misting Spray</p> <p>24 is designated as TTK-NS. That's the same</p> <p>25 designation that you used in your report for the</p>
<p>158</p> <p>1 NasalGuard product. Okay. So we will mark</p> <p>2 Dr. Ermakov's January 11th, 2021, report as</p> <p>3 Exhibit 27.</p> <p>4 (Burns Deposition Exhibit 27 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MS. PETERSON:</p> <p>8 Q. Okay. Mr. Burns, I know you said</p> <p>9 earlier that you recall receiving and reviewing</p> <p>10 Dr. Ermakov's earlier report from 2019. This is a</p> <p>11 second report prepared by Dr. Ermakov testing the</p> <p>12 Trutek and BlueWillow products dated January 11th,</p> <p>13 2021.</p> <p>14 Did you ever receive a copy of this</p> <p>15 report?</p> <p>16 A. I believe I've got a copy of it, yes.</p> <p>17 Q. Okay. And so you've looked at it</p> <p>18 before.</p> <p>19 A. I've looked at it, yes.</p> <p>20 Q. Okay. And you understand that</p> <p>21 Dr. Ermakov tested the same NasalGuard product</p> <p>22 that you tested, as well; right? Is that your</p> <p>23 understanding?</p> <p>24 A. He tested a NasalGuard product. Is it</p> <p>25 the same -- I don't know if it's the same one.</p>	<p>160</p> <p>1 Trutek product; correct?</p> <p>2 A. Yes, that's what I was told to -- so</p> <p>3 there was one material that had that label, and</p> <p>4 that's what I was told to label that as --</p> <p>5 Q. Okay.</p> <p>6 A. -- by the customer.</p> <p>7 Q. Okay.</p> <p>8 A. Like I said, the customer could have</p> <p>9 called it A, B, and C. It doesn't matter to me,</p> <p>10 I'll label it some alphanumeric code that makes it</p> <p>11 easy for them to determine which substance is</p> <p>12 which.</p> <p>13 Q. Okay. And you see here in this table</p> <p>14 that Dr. Ermakov has reported the average surface</p> <p>15 charge per square inch for each of those four --</p> <p>16 well, each of those three test samples plus the</p> <p>17 blank substrate; right?</p> <p>18 Do you see that?</p> <p>19 A. I do see that.</p> <p>20 Q. Okay.</p> <p>21 MR. KREMEN: Per square -- is it per</p> <p>22 square inch? Where do you see per square inch?</p> <p>23 THE WITNESS: It's at the top of the</p> <p>24 column on the far right-hand side.</p> <p>25 MR. KREMEN: Yeah, but it's per square.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

41 (161 to 164)

October 25, 2022

<p>161</p> <p>1 It's per square plus or minus. There's no inch 2 there. 3 THE WITNESS: I-N period square period. 4 I don't know that that I-N stands for inches, but 5 it does say I-N and then period and then S-Q 6 period. 7 BY MS. PETERSON: 8 Q. Okay. And then looking at the average 9 results reported for the two NasalGuard products, 10 would you agree that the surface charge that 11 Dr. Ermakov reported from his testing is higher 12 for the NasalGuard products than it is for the 13 BlueWillow product? 14 MR. KREMEN: Objection to form. 15 BY MS. PETERSON: 16 Q. You can answer. 17 A. So according to what he's written here, 18 you know, if I'm looking at this, it does look 19 like he's got an average line here. And he's 20 reported over on the far right-hand column for 21 the -- let's go at the top. So his blank uncoated 22 substrate had a very small measurement of 6.67 23 times 10 to the negative 15th. So it's very 24 small. 25 And then if you look at the substance</p>	<p>163</p> <p>1 A. Well, keep in mind -- 2 Q. -- than the NasalGuard product? 3 MR. KREMEN: Objection. 4 Shane Burns said that he was not 5 qualified to comment on Ermakov's report or his 6 method of testing. The method of testing could 7 have given all of that. So I don't see where that 8 is a relevant question. 9 MS. PETERSON: Stan, please refrain from 10 making any speaking objections. I'm not asking 11 him to comment on Dr. Ermakov's testing 12 methodology. I'm simply asking him to look at the 13 numbers that are reported. 14 BY MS. PETERSON: 15 Q. So, Mr. Burns, would you agree that 16 Dr. Ermakov's results reached the opposite 17 conclusion showing that the NasalGuard product has 18 a higher surface charge than the BlueWillow 19 product? 20 A. I won't say opposite, but you are 21 correct in that saying -- if you're saying that 22 his report says that over here on the average 23 underneath the "Charge Coulomb/in period sq period 24 plus or minus," you go all the way down to where 25 it says the BlueWillow solution's average, it was</p>
<p>162</p> <p>1 that he's labeled TTK-APV, the average was 2 something more like 8.32 times 10 to the negative 3 14th. So it's slightly larger. It's one order of 4 magnitude larger. 5 And then similar order of magnitude for 6 the TTK-NS 7.19 times 10 to the negative 14th. 7 So, again, 10 to the negative 14th. 8 And then when you look at the BlueWillow 9 NanoBio Protect solution, BW-NBP, they average on 10 the very far right-hand side is, again, 4.35 times 11 10 to the negative 14th. And you're right that 12 the number itself is -- you know, the actual 13 average number itself is smaller, but the order of 14 magnitude is the same -- 15 Q. Okay. 16 A. -- on those three products. 17 Q. Yeah, so same order of magnitude, but 18 the NasalGuard products are reported to have a 19 higher surface charge according to Dr. Ermakov's 20 testing; correct? 21 A. Yes. 22 Q. And that's the opposite result that you 23 reached; right? In your testing, you found that 24 the BlueWillow product had a higher surface 25 charge --</p>	<p>164</p> <p>1 4.35 times 10 to the negative 14th power. 2 And the TTK-NS was 7.19 times 10 to the 3 negative 14th. And that's an average. 4 And then the TTK-APB is 8.32 times 10 to 5 the negative 14th. 6 Q. Okay. So you agree with me that the 7 average charge reported for the TTK-NS product is 8 greater than the average charge reported for the 9 BlueWillow NanoBio Protect product; right? 10 A. I can read what his report says, yes. 11 Q. Okay. And so, yes, that's what his 12 report says that the TTK-NS product has a higher 13 charge; right? 14 A. That's what his report says. 15 Q. Okay. Only if you can, if you can't 16 answer it, that's fine. But do you have any 17 explanation for why the results are different 18 between your two tests, why NasalGuard was a 19 higher surface charge in Dr. Ermakov's test and 20 why you found that it had a lower charge? 21 MR. KREMEN: Objection to form. 22 THE WITNESS: I don't care to speculate 23 on the reasons why he came up with different 24 results because that has something intrinsically 25 to do with his method of measurement. However, I</p>


PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Shane Burns

42 (165 to 168)

October 25, 2022

<p>165</p> <p>1 do notice that his report is measuring the same</p> <p>2 orders of magnitude, so 10 to the negative 14th</p> <p>3 for all three substances. So his methodology</p> <p>4 somehow came up with the same order of magnitude</p> <p>5 for all of them.</p> <p>6 Now, the actual averages for them are</p> <p>7 different, and that's fine. But this has</p> <p>8 something to do with how -- how he came up with</p> <p>9 these measurements has something to do with his</p> <p>10 methodology. And like I said, I'm not familiar</p> <p>11 with this machine. So, you know, if you're asking</p> <p>12 me for reasons why he came up with different</p> <p>13 readings, you'd have to talk to him.</p> <p>14 BY MS. PETERSON:</p> <p>15 Q. Okay. Fair enough. Thank you for that.</p> <p>16 MS. PETERSON: Dr. Burns -- Mr. Burns,</p> <p>17 I've elevated you to having additional degrees.</p> <p>18 Anyways, thank you for your time today. I don't</p> <p>19 have any other questions for you.</p> <p>20 MR. KREMEN: I don't have any questions.</p> <p>21 MS. PETERSON: Okay. So we can go off</p> <p>22 the record.</p> <p>23 THE VIDEOGRAPHER: This marks the end of</p> <p>24 deposition of Shane Burns. We're going off the</p> <p>25 record. The time is now 3:11 p.m.</p>	<p>167</p> <p>1 ACKNOWLEDGEMENT</p> <p>2</p> <p>3 STATE OF MARYLAND)</p> <p>ss</p> <p>4 COUNTY OF MONTGOMERY)</p> <p>5</p> <p>6 I, SHANE BURNS, hereby</p> <p>7 certify, I have read the transcript of my</p> <p>8 testimony taken under oath in my deposition of</p> <p>9 October 25, 2022; that the transcript is a true,</p> <p>10 complete and correct record of what was asked,</p> <p>11 answered and said during this deposition, and that</p> <p>12 the answers on the record as given by me are true</p> <p>13 and correct.</p> <p>14</p> <p>15 _____</p> <p>SHANE BURNS</p> <p>16</p> <p>17</p> <p>18 Sworn and subscribed to before me</p> <p>19 this ____ day of _____, 2022.</p> <p>20</p> <p>21 _____</p> <p>Notary Public</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>166</p> <p>1 (Off the record at 3:11 p.m.)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>168</p> <p>1 STATE OF MARYLAND)</p> <p>2 ss:</p> <p>3 COUNTY OF MONTGOMERY)</p> <p>4</p> <p>5 I, Matthew Goldstein, Notary Public</p> <p>6 within and for the State of Maryland, do hereby</p> <p>7 certify:</p> <p>8</p> <p>9 That I reported the proceedings in the</p> <p>10 within entitled matter, and that the within</p> <p>11 transcript is a true record of said proceedings.</p> <p>12</p> <p>13 I further certify that I am not related</p> <p>14 to any of the parties to the action by blood or</p> <p>15 marriage, and that I am in no way interested in</p> <p>16 the outcome of this matter.</p> <p>17</p> <p>18 IN WITNESS WHEREOF, I have hereunto set</p> <p>19 my hand this 3rd day of November, 2022.</p> <p>20</p> <p>21 </p> <p>22 Matthew Goldstein, RMR, CRR</p> <p>23</p> <p>24</p> <p>25</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM